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Accounting for Violence

The Production, Power and Ownership of the International Criminal Tribunal for Rwanda's Archive

Redwood, Henry Alexander

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Accounting for Violence: The Production, Power and Ownership of the International Criminal Tribunal for Rwanda's Archive

Henry Redwood

King's College London

Thesis submitted for the degree of Doctor of Philosophy

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Abstract

The International Criminal Tribunal for Rwanda's (ICTR) archive, based in Arusha, Tanzania, contains over 4,000 linear metres of documents. It offers a window into the 1994 Rwandan genocide, captured by the testimony of the 3,200 witnesses that took part in the ICTR's trials, and further represents the institutional memory of the Tribunal. Over time, the archive became both a significant aspect of the Tribunal's legacy and a site of controversy as the ICTR's main stakeholders disagreed over who owned the archive, where it should be located and what function it should serve. Consequently, the dissertation assesses how and why the archive exists as it does, and what this can tell us about the main question posed here: whose archive?

The dissertation argues that the archive was produced as it was because of the 'conditions', 'processes' and 'politics' of truth operating within the Tribunal. Whilst the witnesses (largely those that had endured the genocide), played a significant role in the creation of the Tribunal's records, the systematic way in which their interests were subsumed by the needs of the other stakeholders demonstrates that the Tribunal and its archive were not created, nor did they function, with the interests of those who had suffered during the genocide in mind. Rather it was the Tribunal's legal actors, along with political actors at both the United Nations Security Council and within the Rwandan government, who benefited from the way in which the archive was created. This was reflected in the very form of the archive, and demonstrates the inseparable nature of law and politics, and further questions the legitimacy of international criminal justice as it currently exists. This dissertation also presents a re-evaluation of the role of the witness in this process, showing that whilst they played a far more significant role in the trials than is normally considered, they were also pushed to the periphery of the Tribunal's interests (and more so over time). Finally, understanding why and how it was that the archive came to be as it is, and why it was that particular stories about past acts of violence were told during the ICTR's trials, allows for an appreciation of the potential value of these records, and hence the role that they might play, in the future.

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List of Abbreviations

APA	Arusha Peace Accord
CDR	Coalition pour la Défense de la République
ESC	United Nations Economics and Social Council
FAR	Rwandan Armed Forces
GSP	Genocide Story Project
HOC	House of Commons
HOL	House of Lords
ICC	International Criminal Court
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the Former Yugoslavia
JCE	Joint Criminal Enterprise
MDR	Mouvement Démocratique Républicain
MICT	International Residual Mechanism for Criminal Tribunals
MRND	Mouvement Républicain National pour la Démocratie et le Développement
OIOS	United Nations Office of Internal Oversight Services

OTP	Office of the Prosecutor
P5	Permanent 5
PSC	Prefecture Security Council
RPE	Rules of Procedure and Evidence
RPF	Rwanda Patriotic Front
RTLM	Radio Télévision Libre des Mille Collines
SCLC	Special Court of Sierra Leone
TRC	Truth and Reconciliation Commission
UN	United Nations
UNAMIR	United Nations Assistance Mission for Rwanda
UNAMIR 2	United Nations Assistance Mission for Rwanda 2
UNGA	United Nations General Assembly
UNSC	United Nations Security Council
UNSG	United Nations Secretary General

Introduction

We should admit that power produces knowledge (and not simply by encouraging it because it serves power, or by applying it because it is useful); that power and knowledge directly imply one another; that there is no power relation without the correlative constitution of a field of knowledge, nor any knowledge that does not presuppose and constitute at the same time power relations.¹

Introduction

International criminal trials produce an overwhelming volume of information. The International Criminal Tribunal for Rwanda's (ICTR) archive, based in Arusha, Tanzania, alone contains over 4,000 linear metres of documents (this excludes the archives of the Office of the Prosecutor (OTP) and Chambers, which remain inaccessible to the public).² Sitting at the heart of the ICTR's archive is the testimony of the witnesses, who formed the main evidence base at the ICTR, given throughout the Tribunal's history. This totals 26,000 hours of testimony, produced by 3,200 witnesses across 6,000 trial days.³ In addition, thousands of exhibits have been entered into the archive, along with the countless records of motions, correspondence, decisions, strategic reports, and other administrative documents. The archive is not only a considerable record of the violence that engulfed Rwanda in 1994, when in just 100 days nearly one million people were killed. It is also a record of the Tribunal as an institution created by the United Nations Security Council (UNSC) on 8 November 1994 to bring peace and security to the Great Lakes region by offering truth, justice, and

¹ Michel Foucault, *Discipline and Punish: The Birth of the Prison* (New York: Vintage, 1977), 27.

² This is if all of the records were stacked upright. Tom Adami, 'Judicial Record Management/Archiving', *ICTR Legacy Symposium – 20 Years of Challenging Impunity*, 06/11/2014.

³ S/PV.6678, 6678th Meeting, 07/12/2011, 8; and S/2015/884, *Letter Dated 17 November 2015 From the President of The International Criminal Tribunal for Rwanda Addressed to The President of The Security Council: Report on The Completion of The Mandate of The International Criminal Tribunal for Rwanda as at 15 November 2015*, 17/11/2015, 5.

reconciliation.⁴ Moreover, as the ICTR's website makes clear, the archive was more than a passive remnant of the Tribunal's existence; it was intended to help secure a more peaceful future for the international community as a whole:

The records related to the investigations and prosecutions provide insight into the motivations and causes that led to these atrocities, thereby having the potential to educate and inform in the interest of preventing the occurrence of future violations of international humanitarian law.⁵

The archive was therefore central to the UN's ongoing mission to deliver international peace and security.

Over the life span of the Tribunal, the archive became an increasingly central feature of the ICTR's legacy. It also, however, became a subject of controversy when, beginning in 2006, discussions began about what should happen to the archive after the ICTR closed. This dispute focused on whether or not the archive consisted, as the UNSC argued, of the Tribunal's legal and institutional memory, which therefore meant it was required in Arusha where it could support the ongoing work of the Residual Mechanism (the institution that was to complete the ICTR's left over work after it closed).⁶ Or if it, as the Rwandan government argued, contained key records relating to the history and memory of Rwanda, as it had been

⁴ The strategic function of the Tribunal at its outset will be discussed in greater detail in Chapter Two, but for good insight into this see Richard Goldstone, 'Justice as a Tool for Peace-Making: Truth Commissions and International Criminal Tribunals', *Journal of International Law and Politics*, 28 (1995), 485–504.

⁵ ICTR Archive website, at: <http://www.unmict.org/en/about/archives-international-criminal-tribunals>, (last accessed 25 May 2016). 'The Arusha Branch of the Residual Mechanism will also be the home of the ICTR archives. Those archives will hold the nearly 900,000 pages of transcripts and audio and video recordings of more than 6,000 trial days, as well as more than 10,000 interlocutory decisions and the judgements of all persons accused at the trials. As one of our longest-lasting, most permanent legacy projects, the archives will help to ensure that the international community remains conscious of the battle against impunity that the ICTR has fought for so many years.' S/PV.6678, 8.

⁶ S/PV.6041, 6041st Meeting, 12/12/2008, 14; and S/2012/849, *Letter dated 16 November 2012 from the President of the International Residual Mechanism for Criminal Tribunals addressed to the President of the Security Council: Progress report of the President of the International Residual Mechanism for Criminal Tribunals, Judge Theodor Meron (for the period from 1 July to 14 November 2012)*, 16/11/2012, 3.

created *by* and *for* Rwandans as they tried to overcome the 1994 genocide.⁷ With this the Rwandan government argued the archive should be *returned to* Rwanda.

Underpinning this dispute were the questions of: Who should the archive serve? What was its purpose and what value do its records hold? Who had played the most significant role in creating it? Did the archive contain, as Rwanda claimed, the Rwandan witnesses' accounts of their experiences violence, or did these, as the UNSC seemed to think, represent primarily *legal* records of legal and institutional value? This dissertation takes this as a springboard to explore the overarching question that arose from this dispute: *whose archive?*

Analysing the archive also allows for a subsidiary line of enquiry to be pursued. For as the UNSC claimed, the archive also captured the institutional memory of the Tribunal, and as such it is worth questioning what the archive can tell us about the institution that surrounded it, and what the Tribunal's purpose was, and whose interests it, more broadly, served. Indeed, the dispute over the archive was not the only time when the different interests of the Tribunal's stakeholders clashed; tensions at one point or another seemingly existed between every combination of the Tribunal's stakeholders: defendants and defence counsels, the UNSC, the Tribunal as a quasi-independent institution (tensions also existed *within* the Tribunal between the prosecution, registry and chambers), the victims and Rwanda. Indeed, throughout its 21-year existence, the Tribunal was a site of contestation where different actors with different priorities competed in order to determine how the Tribunal functioned,

⁷ See: S/PV.5453, 5453rd Meeting, 07/06/2006, 32; and S/PV.5697, 5697th Meeting, 18/06/2007, 33.

to what ends and in whose interests.⁸ As such this thesis will also consider what mark these contestations left on the archive, and what this can tell us about the purpose of the Tribunal.

The dissertation argues that the key to understanding why the archive exists as it does lies in exploring the rules that determined what could be uttered within the courtroom and the ways in which the relationships between the Tribunal's various stakeholders influenced what was archived, in what manner, and how this changed over time. Ultimately, despite that a number of different actors influenced how the archive was produced, including the witnesses, who played an important role here, the archive was created in the image, and reflected the interests, of the Tribunal's legal actors, along with the political actors at the UNSC and within the Rwandan government. As will become clear, this had important consequences for the role that the Tribunal played as part of the UN's response to the 1994 genocide.

Key to this dissertation, then, is understanding what it is these courts are for and in whose interests they function. To date, similar questions have been addressed by a number of different scholars from fields including history, law, transitional justice and peacebuilding studies. These debates have tended to revolve around a series of binaries that hold that the different functions and interests reflected in international criminal trials are mutually exclusive. These binaries are: truth vs. justice; justice vs. reconciliation; international vs. local; and politics vs. law. These will be explored in turn, in order to set out the parameters of this dissertation, before I subsequently outline the methodology adopted for the dissertation and the content of the empirical chapters.

⁸ This point has been made in relation to transitional justice more generally. See Phil Clark, 'Tensions in Transitional Justice', in *After Genocide: Transitional Justice, Post-Conflict Reconstruction and Reconciliation in Rwanda and Beyond*, ed. Phil Clark *et al.* (New York: Columbia University Press, 2009), 381–93.

International Courts as Sites of Contestation

Truth vs. Justice

The ‘Holocaust trials’, which emerged in the wake of World War Two (WW2) as a response to the atrocities committed by Nazi Germany and its allies,⁹ were seen as moments where the historical truth about the past would be revealed.¹⁰ As Robert Kempner, a prosecutor at the Nuremberg trials—where the allies prosecuted 22 leading German officials for crimes committed in the build up to, and during, WW2—stated, these trials were to be the ‘greatest history seminar ever held in the history of the world’.¹¹ The international trials held at the outset of the 1990s, when the ICTR was created along with the International Criminal Tribunal for the Former Yugoslavia (ICTY), built on the legacy of the Holocaust trials, and were seen as institutions that could both administer justice and provide an accurate historical account of past violence.¹² Beyond the interests of lawyers and academics, these courts were seen as assisting those directly affected by violence, both through the reintroduction of order

⁹ It should be noted that the idea of ‘Holocaust trials’ is a retrospective label that captures those post-WW2 prosecutions that have come to be seen as primarily concerned with the Holocaust. In reality, however, these dealt with a wide array of crimes, and were driven by manifold political motives that were often at odds with capturing the Holocaust as a distinct historical event (discussed below).

¹⁰ Shoshana Felman, *The Juridical Unconscious: Trials and Traumas in the Twentieth Century* (London: Harvard University Press, 2002), 11–13. This relationship between trials and history predated Nuremberg. Carlo Ginzburg, ‘Checking the Evidence: The Judge and the Historian’, *Critical Inquiry* 18:1 (1991), 79–81.

¹¹ Lawrence Douglas, ‘History, Memory and Crimes against Humanity: A Response to Todorov’, *Salmagundi* 128–129 (2001), 320.

¹² *Supra* note 4, 485–504; Geoffrey Robertson, *Crimes against Humanity: The Struggle for Global Justice* (London: 3rd Edition: Penguin Books, 2006), xxiii–xxv; Dan Stone, ‘Genocide and Memory’, in *The Oxford Handbook of Genocide Studies*, ed. Dirk Moses and Donald Bloxham (Oxford: Oxford University Press, 2010), 111–2; Richard Goldstone, ‘From the Holocaust: Some Legal and Moral Implications’, in *Is the Holocaust Unique? Perspectives on Comparative Genocide*, ed. Alan Rosenbaum (Oxford: Westview Press: 2nd Edition, 2000), 41–7; Pierre Hazan, *Judging War, Judging History: Behind Truth and Reconciliation* (Stanford: Stanford University Press: 2nd Edition, 2010), 12; Jose Alvarez, ‘Lessons from the Akayesu Judgement’, *Journal of International and Comparative Law* 5 (1998), 364; and Rosemary Byrne, ‘Promises of Peace and Reconciliation: Previewing the Legacy of the International Criminal Tribunal for Rwanda’, *European Review* 14:4 (2006), 485.

and the rule of law *and* by revealing the truth behind what happened, helping, as Mark Osiel has argued, to generate a new collective memory.¹³

Over time, however, this association was questioned by two different groups of scholars. First, a number of historians questioned whether courts could ever function as sites of historical exploration. Donald Bloxham and David Pendas, for instance, argued in relation to Nuremberg and the Frankfurt trials—which prosecuted 22 low to mid-level Auschwitz officials—respectively, that the law framed these courts’ narratives so tightly that they produced a distorted image of the violence being examined. At Nuremberg, the London Charter (the court’s statute) meant that crimes against humanity (the crime best suited to capturing the Holocaust) had to be linked to a charge relating to crimes of aggression, meaning that the Holocaust became subsumed in a narrative of aggressive war, rather than becoming a distinct atrocity.¹⁴ Similarly, the need to secure a verdict rather than provide a comprehensive account of what happened meant that the prosecution presented a stunted historical account that conflated similar acts of violence together (for instance, all camps were treated as being identical) and ignored others that were superfluous to the legal purpose of the court (such as ‘Operation Reinhardt’—a key moment in the evolution of the Holocaust).¹⁵ Likewise, the Frankfurt court’s use of a nineteenth century penal code meant that the prosecution had to provide evidence of base motives, such as a lust for killing, when establishing the crimes committed at Auschwitz, which worked to conceal the industrial

¹³ Mark Osiel, *Mass Atrocity, Collective Memory, and the Law* (New Jersey: Transaction Publishers, 2000), 1–6.

¹⁴ *Ibid.*, 226–7; Donald Bloxham, *Genocide on Trial: War Crimes Trials and the Formation of Holocaust and Memory* (Oxford: Oxford University Press, 2001), 73 and 106; Lawrence Douglas, *The Memory of Judgement: Making Law and History in the Trials of the Holocaust* (London: Yale University Press, 2001), 48–9; Allan Ryan, ‘Jewish Identity, the International Tribunal at Nuremberg and the Eichmann Trial’, in *From the Protocols of the Elders of Zion to Holocaust Denial Trials*, ed. Debra Kaufman *et al.* (London: Valentine Mitchell, 2007), 102–3; and Laurel Leff, ‘Jewish Victims in a Wartime Frame’, in Kaufman, *Protocols of the Elders of Zion*, 80–2. For a counter-argument see Michael Marrus, ‘The Holocaust at Nuremberg’, *Yad Vashem Studies* 26 (1998), 1–32.

¹⁵ Bloxham, *Genocide on Trial*, 101, 114–5, 123, and 127.

nature of the violence.¹⁶ Historian Henry Rousso thought the purpose and practice of history to be so distinct from law that he refused to participate as an expert witnesses at the 1994 trial of Maurice Papon (a Vichy bureaucrat), believing that the information produced by the trial would actually *harm* the nations' historical understanding of its past.¹⁷ Rousso argued that the Manichean world of the courtroom could not possibly capture the intricacies of people's participation in crimes like the Holocaust where one individual (like Papon) could be variously collaborator, ideologue, *and* resister.¹⁸

This understanding of the poor quality of trial histories speaks to those transitional justice scholars who see the pursuit of justice (here a narrow retributive justice) as being incompatible with ascertaining the 'truth'—a notion that particularly gained traction in the wake of the perceived success of the 1995 South African Truth and Reconciliation Commission (SATRC).¹⁹ In particular these scholars argue that the perpetrator-centric nature

¹⁶ David Pendas, *The Frankfurt Auschwitz Trial, 1963–1965* (Cambridge: Cambridge University Press, 2006), 53–79, 295 and 316; Rebecca Wittmann, 'Indicting Auschwitz? The Paradox of the Frankfurt Auschwitz Trial', *German History* 21:4 (2003), 510–12; Ian Buruma, *Wages of Guilt* (London: Atlantic, 2009), 153; Rebecca Wittmann, 'The Wheels of Justice Turn Slowly: The Pre-trial Investigations of the Frankfurt Auschwitz Trial 1963–65', *Central European History* 35:2 (2002), 531; and Katharina von Kellenbach, 'Vanishing Acts: Perpetrators in Post-war Germany', *Holocaust and Genocide Studies* 17 (2003), 314.

¹⁷ Henry Rousso, *The Haunting Past: History, Memory and Justice in Contemporary France* (Pennsylvania: University of Pennsylvania Press, 2002), 73.

¹⁸ *Supra* note 13, 126–7; Rousso, *Haunting Past*, 64; Richard Golsan, 'Introduction: Maurice Papon and Crimes against Humanities in France', in *The Papon Affair*, ed. Richard Golsan (London: Routledge, 2000), 13; Gerry Simpson, *Law, War and Crime: War Crimes Trials and the Reinvention of International Law* (Cambridge: Polity Press, 2007), 101–13. For more on the politics of Holocaust trials and memory in France see Nancy Wood, 'Crimes or Misdemeanours?: Memory on Trial in Contemporary France', *French Cultural Studies* 5 (1994), 55 and 62–3 and 68; Richard Golsan, 'The Legacy of WWII in France', in *The Politics of Memory in Postwar Europe*, ed. Richard Lebow *et al.* (London: Duke University Press, 2006), 102–3; and Nathan Bracher, 'La Mémoire Vive et Convulsive: The Papon Trial and France's Passion for History', *The French Review* 3:2 (1999), 319. For a variation of this argument, which contends that the pursuit of history in courts *damages* law, see Hannah Arendt, *Eichmann in Jerusalem: a Report on the Banality of Evil* (London: Penguin, 2006), 3–13; and Buruma, *Wages of Guilt*, 142.

¹⁹ Martha Minow, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence*, (Boston: Beacon Press, 1998), 47; Nancy Rosenblum, 'Justice and the Experience of Injustice', in *Breaking Cycles of Hatred: Memory, Law and Repair*, ed. Nancy Rosenblum *et al.* (Oxford: Princeton University Press, 2002), 83 and 88; Claire Garbett, 'The Truth and the Trial: Victim Participation, Restorative Justice, and the International Criminal Court', *Contemporary Justice Review* 16:2 (2013), 194–9; and Eric Brahm, 'Uncovering the Truth: Examining Truth Commission Success and Impact', *International Studies Perspectives* 8 (2007), 18–9 and 21; and Robert Rotberg, 'Truth Commissions and the Provision of Truth, Justice, and Reconciliation', in *Truth v. Justice: the Morality of Truth Commissions*, ed., Robert Rotberg *et al.* (Princeton: Princeton University

of these procedures and the pursuit of a final legal verdict mean that witnesses are prevented from testifying to their experiences in full, limiting the potential historical value of these courts' accounts.²⁰ Moreover, it is argued that law's epistemology further limits the courts' ability to reveal meaningful historical accounts, as it focuses its narratives around the actions of what it sees as conscious autonomous individuals (a hangover from its enlightenment origins). When this is combined with law's drive to divide the world neatly into those that are guilty or innocent, it is not surprising that, as Mark Drumbl has argued, law struggles to deal with the complex and collective nature of crimes like genocide.²¹

A number of scholars have, however, pushed back against this position. Lawrence Douglas argues, for instance, that courts can, and do, perform a didactic role where law is administered and a historical consciousness is generated. In fact, despite some shortcomings, *Nuremberg* and the trial of Adolf Eichmann in Jerusalem (1961) captured the public's imagination *exactly because they were trials*, as the spectacle and dramatic nature of these

Press, 2000), 3–22; Jonathan Tepperman, 'Truth and Consequences', *Foreign Affairs* 81:2 (2002), 130–1; Martha Minow, 'Making History or Making Peace: When Prosecutions Should Give Way to Truth Commissions and Peace Negotiations', *Journal of Human Rights* 7:2 (2008), 175; and Martha Minow, 'The Hope for Healing: What Can Truth Commissions Do?', in Rotberg, *Truth v. Justice*, 236–8.

²⁰ Tepperman, 'Truth and Consequences', 130; and Audrey Chapman and Patrick Ball, 'The Truth of Truth Commissions: Comparative Lessons from Haiti, South Africa, and Guatemala', *Human Rights Quarterly* 23:1 (2001), 3.

²¹ Tim Kelsall, *Culture under Cross-examination: International Justice and the Special Court for Sierra Leone* (Cambridge: Cambridge University Press, 2009), 8–16; Mark Drumbl, 'Pluralising International Criminal Justice: from Nuremberg to the Hague: the Future of International Criminal Justice by Philippe Sands', *Michigan Law Review* 103:6 (2005), 1302–4; and Michael Humphrey, 'International Intervention, Justice and National Reconciliation: the Role of the ICTY and ICTR in Bosnia and Rwanda', *Journal of Human Rights* 2:4 (2003), 498. Indeed, an important aspect of this thesis is to consider how 'victims' and 'perpetrators' were constructed as objects within the court's accounts of violence, and the ways in which these categories struggled to deal with the complexity of actor's participation in crimes like genocide (pp. 102–119). An additional issue with this division is that very often it is only the needs of a small number of victims in the aftermath of violence that are considered. The way in which 'victimhood' is defined excludes huge swathes of the population that similarly endured the violence. As such, where it is this broader constituency that is being referred to – i.e. all those that endured the violence in some capacity – I avoid using terms like victim and perpetrators, which are overly restrictive in their nature. See for example Louis du Toit, 'Feminism and the Ethics of Reconciliation (see Internet Materials); and Stuart Motha, 'Reconciliation as Domination', in Scott Veitch (ed.) *Law and the Politics of Reconciliation* (Abingdon: Routledge, 2007), 69–93.

events enabled the creation of a shared historical consciousness concerning the Holocaust.²² At Nuremberg, the screening of the Nazi Concentration Camp film ‘imprinted on the western consciousness the images which have come to characterise the Final Solution’²³ and the figure of six million dead became an accepted truth.²⁴ The state of Israel put on a staggering history lesson by conducting *Eichmann*, integrating the Holocaust into the nation’s conscience as the victims of the Holocaust were heard for the first time.²⁵ Douglas acknowledged that these accounts were not perfect, and that much of the fault lay, as Bloxham and Pendas argued, with the law itself and the way in which it framed the trial’s narratives. However, Douglas also contends that law is an adaptive beast; as a result of its encounters with crimes like the Holocaust, it *responded* by producing the new legal idioms of crime against humanity and genocide, which were better able to capture these acts of violence.²⁶ As such, there is nothing inherently built into law that means that it *cannot* produce accurate histories of past violence, but it becomes more a question of using the ‘right’ law in order to tell the best possible story.²⁷

In a similar vein, Nigel Eltringham has convincingly argued that the attempt to draw a line between history and law is erroneous as both construct narratives about the past in strikingly similar ways. Both entice testimony from witnesses, shape these around particular interests, and adopt a particular understanding of how it is that agents in history act.²⁸ In fact, for

²² Douglas, *Memory of Judgement*, 66 and 71. See also Marrus, ‘Holocaust at Nuremberg’, 1–32.

²³ Douglas, *Memory of Judgement*, 62.

²⁴ *Ibid.*, 70.

²⁵ *Ibid.*, 103 and 156–7; and Shoshana Felman, ‘Theatres of Justice: Ardent in Jerusalem, the Eichmann Trial, and the Redefinition of Legal Meaning in the Wake of the Holocaust’, *Theoretical Inquiries in Law* 1:2 (2000), 465–508.

²⁶ *Supra* note 23, 4.

²⁷ *Supra* note 13, 79.

²⁸ Nigel Eltringham, “‘We are Not a Truth Commission’: Fragmented Narratives and the Historical Record at the International Criminal Tribunal for Rwanda’, *Journal of Genocide Research* 11:1 (2009), 55–65. See also Austin Sarat and Thomas Kearns, ‘Writing History and Registering Memory in Legal Decisions and Legal Practices: an Introduction’, in *History, Memory, and the Law*, ed. Austin Sarat *et al.* (Michigan: University of

Eltringham, the archives of these courts are very much like oral history archives, and the judgements function as catalogues for that archive, as their footnotes contain markers of where the key testimony can be found.²⁹ Similarly Charles Maier argues that both judges and historians turn the complex social world into a comprehensible story with a false sense of cohesion, finality, and impartiality.³⁰ Richard Wilson has argued that not only do these courts inevitably produce historical narratives—making the sharp division between the two disciplines futile—but that history became *legally relevant* at the international trials of the 1990s, particularly due to the role that historians and social scientists performed as expert witnesses.³¹ These historical narratives became particularly important when producing the background and context upon which the court could interpret complex, and essentially collective, crimes like genocide. Osiel develops this idea yet further, arguing that not only is it inevitable that courts will produce histories and collective memories, but that judges should be more aware of their obligation to fulfil this task as best they can, as these trials, as Douglas argued, form key moments in the development of a national consciousness.³²

These scholars rightly question the divide between law and history that historians, such as Bloxham, and those from transitional justice, such as Martha Minow, have erected. They also open the exploration of these courts up to different questions which move beyond the entrenched, and not particularly fruitful, discussion of whether they produce good or bad

Michigan, 1999), 1–24; and Charles Maier, “‘Doing History, Doing Justice’: The Narrative of the Historian and of the Truth Commission”, in Rotberg, *Truth v. Justice*, 267 and 270–1.

²⁹ Eltringham, ‘We Are Not a Truth Commission’, 65–7.

³⁰ Charles Maier, ‘Doing History’, 271; and *Supra* note 13, 83.

³¹ Fergal Gaynor, ‘Uneasy Partners—Evidence, Truth and History in International Trials’, *Journal of International Criminal Justice* 10 (2012), 1262; Ruti Teitel, *Transitional Justice* (Oxford: Oxford University Press, 2000), 69–75; Simpson, *Law, War and Crime*, 79–80; *Supra* note 13, 79; Richard Wilson, *Writing History in International Criminal Trials* (Cambridge: Cambridge University Press, 2010), 12–20, 69–86, 112–13 and 121–28; and Nigel Eltringham, ‘Illuminating the Broader Context: Anthropological and Historical Knowledge at the International Criminal Tribunal for Rwanda’, *Journal of the Royal Anthropological Institute* 19:2 (2013), 342.

³² *Supra* note 13, 79; and, *Law, War and Crimes*, 80–1.

histories, to ask *what histories* and *why*? These subsidiary questions, which form a key part of this enquiry, are important for several reasons.

As Kirsten Campbell has argued, courts do not simply find or uncover the particular memories that populate its archive, but they actively construct them.³³ What this instantly suggests is that these are not neutral or impartial accounts but rather are constructed from a particular perspective, and that it is thus important to determine under what conditions and to what effect these are produced as they are. Foucault has similarly argued that it is important to understand how different sites produce, control, and exclude knowledge in particular ways, which allows for an understanding of the *politics* of knowledge production, something that is not currently addressed within this debate.³⁴ Additionally, it is (while not reverting back to the dichotomy of law vs. history) also important to retain a sense of the *specificity* of the courtroom as a legally focused site of knowledge production and to determine how this influences the way in which particularly accounts of violence are produced. This resonates with the work of James White, whose idea of ‘justice as translation’ states that as the social world is translated into law the translation (as with all translations) results in both exuberance

³³ Kirsten Campbell, ‘The Laws of Memory: The ICTY, Archive, and Transitional Justice,’ *Social and Legal Studies* 22:2 (2013), 251–3.

³⁴ Michel Foucault, ‘Truth and Power’, in *Power/ Knowledge: Selecting Interviews and Other Writings 1972–1977*, ed. Colin Gordon, trans. Colin Gordon *et al.* (New York: Pantheon Books, 1980), 131; Foucault, *Discipline*, 28; Michel Foucault, *The Archaeology of Knowledge and the Discourse on Language* (New York: Pantheon Books, 1972), 14–15, 27, 32–8, 84–99, and 117. As will be explored later this forms the basis of Foucault’s ‘archaeological methodology’. See Colin Gordon, ‘Afterword’, in Gordon, *Power/ Knowledge*, 243–4. For a good outline of some of the factors that need to be considered when understanding why certain truths are constructed by these processes see: Audrey Chapman, ‘Truth Finding in the Transitional Justice Process’, in *Assessing the Impact of Transitional Justice: Challenges for Empirical Research*, ed. Hugo Van der Merwe *et al.* (Washington: United States Institute of Peace Press, 2009), 95–104. It is for this reason also that the distinction between trials and truth commissions (with truth commissions more successfully uncovering ‘the truth’) should be questioned. For a good account of this see Chapman and Ball, ‘The Truth of Truth Commissions’, 1–43. For a more general critique of the value of truth in times of transition see: David Mendeloff, ‘Truth–Seeking, Truth–Telling, and Postconflict Peacebuilding: Curb the Enthusiasm?’, *International Studies Review* (2004), 6 and 355–80; and Erin Daly, ‘Truth Scepticism: an Inquiry into the Value of Truth in Times of Transition’, *The International Journal of Transitional Justice* 2:1 (2008), 23–41.

(as meaning is added) and deficiency (as meaning is lost).³⁵ The question is, how, in what ways, and to what effect, does this translation take place.

The point is that clearly *not any* history could be told, so it is important to further explore what shapes the relationship between law and history. What accounts did the prosecution tend to construct during the ICTR's trials? Was this the same for all defendants? Did law always produce a Manichean understanding of the social world? How did the understanding of individuals as conscious actors influence how the prosecution constructed their accounts? How did law account for other actors involved in these crimes, such as the victims and even bystanders? If law is truly an adaptive beast that responds to the violence it encounters, in what ways did law evolve over the course of the ICTR and what did this mean for how it captured the violence that occurred within Rwanda? Finally, as an important (but usually ignored) question, what types of stories did the defence tell about these crimes?³⁶

Two additional aspects need to be considered here. First, these accounts focus almost solely on the effects of law on the way that violence was accounted for. As will be discussed shortly it is also important to consider the effects of other factors, such as the political landscape surrounding these courts, in determining what accounts were produced and why. Second is the role that the witness plays in this process. Douglas, like many others, sees that *Eichmann* established a more rounded account of the Holocaust principally because of the space

³⁵ James White, *Justice as Translation: an Essay in Cultural and Legal Criticism* (Chicago: Chicago University Press, 1990), 229–69; and Clark Cunningham, 'The Lawyer as Translator, Representation as Text: towards an Ethnography of Legal Discourse', *Cornell Law Review* 77:6 (1992), 1298–387.

³⁶ For exceptions see: Simpson, *Law, War and Crime*, 90–4, and Jenia Turner, 'Defense Perspectives on Law and Politics in International Criminal Trials', *Virginia Journal of International Law* 48:3 (2007), 529–93.

afforded to the witnesses.³⁷ But *Eichmann* was also an anomaly as the trial was explicitly used as a state-building exercise, where its central function was to produce a historical consciousness about the Holocaust. As such, *Eichmann* saw a stream of witnesses who had an incredible value in presenting the full horror of the Holocaust but had little to nothing to say about Eichmann.³⁸ What role were witnesses afforded in other international courts, such as the ICTR? This question has occupied transitional justice scholars in what can be seen as the ‘justice vs. reconciliation’ debate, discussed next.

Justice vs. Reconciliation

In the wake of *Eichmann*, a harmonious relationship appeared to exist between witnesses and courtrooms. Annette Wieviorka argues that *Eichmann* marked the beginning of the ‘era of the witness’, where the power and importance of the witness within contemporary society was recognised.³⁹ This moment also signalled an evolution within legal practice, as lawyers appeared to move away from *Nuremberg*’s scepticism of witness testimony, towards an acceptance of its value.⁴⁰ Perhaps not just coincidentally, during a similar time frame the notion of victim’s rights also came to be associated with discourses about justice, and these ideas even started to influence courtroom procedure as the rights of the victims came to supplement the more traditional concerns with the rights of the accused.⁴¹ This relationship

³⁷ See Felman, ‘Theatres of Justice’, 201–38; Annette Wieviorka, *Era of the Witness* (New York: Cornell University Press, 2006), 56–145; and Tim Cole, *Selling the Holocaust* (London: Routledge, 2000), 56–72; and Tim Cole, ‘The Holocaust and its (Re)Telling: The Nature of Evidence at the Nuremberg and Eichmann Trials, in Kaufman, *Protocols of the Elders of Zion*, 56–66.

³⁸ Arendt, *Eichmann in Jerusalem*, 225; and Cole, *Selling the Holocaust*, 62.

³⁹ Wieviorka, *Era of the Witness*, 56–7.

⁴⁰ Felman, *Juridical Unconscious*, 132–4.

⁴¹ Carolyn Hoyle and Leila Ullrich. ‘New Court, New Justice? The Evolution of ‘Justice for Victims’ at Domestic Courts and at the International Criminal Court’, *Journal of International Criminal Justice* 12:4 (2014), 682–3; and Deputy Appeals Chief – ICTR Office of the Prosecutor (Arusha, Tanzania: June, 2015). (Hereafter this name/year format is used for full and shortened interview citations.)

was developed further at the ad hoc tribunals in the 1990s where witness testimony featured prominently during the prosecutions. Indeed, at that ICTR witnesses were almost the *only* evidence available. This was not initially seen as a problem, but rather added to the potentially positive impact that these trials could make, as they could both secure justice against the accused whilst providing the witnesses with a moment of cathartic relief as they unburdened their souls.⁴² Consequently, international courts very much were seen as spaces *for victims*. This is a claim that continues to be made by advocates of international criminal justice when justifying the legitimacy of these institutions.⁴³

Whilst this is very much the rhetoric that emanates from the halls of international criminal justice,⁴⁴ the extent to which this matches reality is debatable. From the late 1990s onwards, several scholars, such as Martha Minow, Marie-Bénédicte Dembour and Emily Haslem, began to argue that the courts' legal processes and goals meant that they were more likely to 'silence' victims than offer them a space for personal reflection and truth telling.⁴⁵ There is now general consensus that victims are powerless as the court constructs its account of the past, as while they are testifying victims are only allowed to answer those questions that they are asked by the prosecutor, defence attorney, or judge without any elaboration or deviation.⁴⁶

⁴² *Supra* note 6, 487–9.

⁴³ Paul Dixon and Chris Tenove, 'International Criminal Justice as a Transnational Field: Rules, Authority and Victims', *International Journal of Transitional Justice* 7:3 (2013), 16–18; Garbett, 'The Truth and the Trial', 196–9; and Hoyle and Ullrich, 'New Court', 684–95.

⁴⁴ Dixon and Tenove, 'International Criminal Justice', 16–18.

⁴⁵ Marie-Bénédicte Dembour and Emily Haslam, 'Silencing Hearings? Victim-Witnesses at War Crime Trials', *European Journal of International Law* 15:1 (2004), 151–77.

⁴⁶ *Ibid.*, 163–5; Kieran McEvoy and Kirsten McConnachie, 'Victims and Transitional Justice: Voice, Agency and Blame', *Social and Legal Studies* 22:4 (2013), 492–5; Nicola Henry, 'The Impossibility of Bearing Witness: Wartime Rape and the Promise of Justice', *Violence against Women* 16:10 (2010), 1107–10; Rosalind Dixon, 'Rape as a Crime in International Humanitarian Law: Where to from Here?' *European Journal of International Law* 13:3 (2002), 705; Rosenblum, 'Justice and the Experience of Injustice', 77–103; Garbett, 'Truth and the Trial', 194–9; Brahm, 'Uncovering the Truth', 18–9; Minow, 'Making History', 177; and Minow, 'Hope for Healing', 236–8. There has been some more moderate criticism from within the Transitional Justice world, which whilst seeing these sites as imperfect forms of justice, still sees potential within them. See, for instance, Eric Stover, 'Witnesses and the Promise of Justice', in *My Neighbour, My Enemy: Justice and Community in the*

This drastically limits their testimony to what is legally relevant to the court, focusing their narratives on the criminal responsibility of the defendant in what is seen as a perpetrator–centric process.⁴⁷ This, as Franke and Henry argue, recreates the initial violence of the crime, as it removes the subject’s ability to speak in their own voice, much like the initial act of violence which inflicted a un–narratable trauma upon the subject.⁴⁸ Thereby the victim–witness becomes a passive object within the courtroom. Courts are now often seen as potentially *dangerous* spaces for victims, as witnesses are faced with a dual risk of re–traumatisation by being forced to reclaim the position of the victim: first as a result of having to relive the horrors of the past and second as they are silenced by legal actors in the court.⁴⁹

As Jenny Edkins has similarly argued, these processes in many ways *co–opt* the witness’s voice and memory for their own purposes and, building on Walter Benjamin’s concern with the practices of history, end up concealing the radical potential of witness testimony: to unveil the sovereign’s and the wider political system’s responsibility for creating the conditions whereby that trauma became a possibility.⁵⁰ Instead, by constructing understandings of ‘victimhood’ *through* the witnesses’ testimony, these sites treat past acts of violence as being successfully redressed, thus ignoring (and facilitating) the revitalisation of those systems of power that brought about the violence in the first place.⁵¹ The implication

Aftermath of Mass Atrocity, ed. Eric Stover and Harvey Weinstein (Cambridge: Cambridge University Press, 2004), 104–20.

⁴⁷ Minow, ‘Hope for Healing’, 238; and Sarah Wang, ‘Transitional Justice as Retribution: Revisiting its Kantian Roots’, in *Transitional Justice in Critical Perspective*, ed. Nicola Palmer *et al.* (Antwerp: Intersentia, 2012), 33.

⁴⁸ Henry, ‘Impossibility’, 1100–1 and 1109; and Katherine Franke, ‘Gendered Subjects of Transitional Justice’, *Journal of Gender and Law* 15:3 (2006), 818–20. This closely mirrors Walter Benjamin’s concerns about the way in which victim’s voices are so often appropriated throughout history, and so rarely heard. In the face of the co–option of their voice *by both history and language itself*, Benjamin recognises that sometimes the only real response to these crimes is silence. Felman, *Juridical Unconscious*, 34–7.

⁴⁹ There is now, more generally, a criticism about the idea that speaking out is *necessarily* helpful, challenging the cathartic nature of testifying. Daly, ‘Truth Scepticism’, 30–2.

⁵⁰ ‘What we call trauma takes place when the very powers that we are convinced will protect us and give us security become our tormentors: when the community of which we considered ourselves members turns against us or when our family is no longer a source of refuge but a site of danger [...]’, Jenny Edkins, *Trauma and the Memory of Politics* (Cambridge: Cambridge University Press, 2003), 4.

⁵¹ *Ibid.*, 5–15, 189–91 and 201.

here is that these trials most certainly do not work in the interests of the witnesses, as the contents of the archive are, consequently, likely to reflect.

Whilst correctly raising the question of for whom these courts are really working and beginning the process of critiquing the courts' claims to be spaces that work for victims, several factors imply that the witnesses' role within the trial process warrants further analysis. First, those studies that emphasise the passivity of the witnesses only consider the role afforded to victim witnesses during these trials, while ignoring perpetrator and expert witnesses, who featured prominently at the ICTR's trials. Whilst Eltringham, Wilson and Campbell have demonstrated that experts could have a significant impact (both positive and negative) on the trial process,⁵² no attention has been paid to perpetrator witnesses, whose testimonies, especially in the later years of the ICTR, made up a significant part of evidence during trials. It is therefore important to question whether or not all witnesses were treated the same within the courtroom and, if not, how were the various groups treated differently and why. This also opens up a new line of enquiry: how does examining the role of perpetrator and defence witnesses challenge or support the idea that these are 'perpetrator-centric' spaces?

Additionally, whilst Dembour and Haslem's account remains the most empirically grounded study, even this is only limited to one particular trial at the ICTY, which is insufficient to make conclusive findings. This is something that they themselves acknowledge, noting that

⁵² Wilson shows the important role that experts played in constructing the OTP's cases, whilst Campbell showed how some expert witnesses at the ICTY, who testified to witnesses' psychological 'integrity', had the effect of amplifying the court's scepticism of rape testimony. Wilson, *Writing History*, 69–86, 112–3 and 121–8. Kirsten Campbell, 'Testimonial Modes: Witnessing, Evidence and Testimony before the International Criminal Tribunal for the Former Yugoslavia', in *The Future of Testimony*, ed. Antony Rowland *et al.* (London: Routledge, 2014), 92–5; and Eltringham, 'Illuminating the Broader Context', 338–355.

the field is '[crying] out for a debate on the way in which legal stories are fashioned'.⁵³ I also believe that it is likely that witnesses were treated differently at the ICTR compared to the ICTY. For unlike the ICTY, where other evidence was drawn on in the final accounts, the ICTR relied, with very few exceptions, solely on witnesses.⁵⁴ To what extent, then, did this mean they were afforded a more central and important role during the trial process? Moreover, as *Eichmann* demonstrated, witnesses *can* in certain situations meaningfully participate within these proceedings, and as such the question needs to be *under what conditions can* witnesses significantly contribute towards, and shape, the content of a trial's account of violence and hence the archive?⁵⁵ Did the trials at the ICTR mark a moment, like *Eichmann*, where the victims were not only afforded the chance to speak and be heard (re-introducing their subjectivity), but that, consequently, a radical history (in the sense suggested by Walter Benjamin) was created?⁵⁶ If so does this, as Arendt feared, de-centre the position of the defendant to the point where the trial became something other than law?⁵⁷ Finally, whilst these studies are keen to show what these witnesses *were not* permitted to discuss, there is little attention given to the content of their evidence. Currently courts are seen only as 'consumers of the memories of others'⁵⁸ rather than, as Campbell has suggested,

⁵³ Dembour and Haslem, 'Silencing Hearings', 154–5.

⁵⁴ *Ibid.*, 168.

⁵⁵ Indeed, there is something uncomfortable about this question of silencing, and the fact that the description of the victims as passive entities very much regurgitates the discourse that scholars like Dembour and Haslem are seemingly critiquing. McEvoy and McConnachie, 'Victims and Transitional Justice', 489–513. The notion of silencing (both in the inability to capture trauma adequately in words, and the effects of the trial process on the witnesses) also pulls in tension against the commonly stated desire by survivors of the *need* to testify (often citing this as a *reason for surviving*), the agency that can come with speaking in court against a past tormentor, and that witnesses undoubtedly perform a crucial function within the trial process. Moreover, as Eric Stover has shown, witnesses often willingly participant in these trial processes and in at least some instances these offer witnesses the recognition and sense of validity and *justice* that they are searching for. Eric Stover, *The Witnesses* (Philadelphia: University of Pennsylvania Press, 2005), 16.

⁵⁶ Felman, 'Theatres of Justice', 493–502. Felman quotes Benjamin: 'Only that historian will have the gift of fanning the spark of hope in the past who is firmly convinced that even the dead will not be safe from the enemy if he wins.' Felman, *Juridical Unconscious*, 15. See also 29–31 and 144–63.

⁵⁷ Felman, 'Theatres of Justice', 489–91.

⁵⁸ Franke, 'Gendered Subjects', 812.

sites that *produce* memories.⁵⁹ What, then, do witnesses end up testifying to, and why is this the case?

In contrast to the claims of passivity noted above, Nancy Combs argued that *witnesses manipulate* (rather than are manipulated by) the trial process due to the fact that they, Combs claims, frequently lie in court. This is not a minor issue; Combs found that a large number of witnesses (around 50 percent at the ICTR) significantly altered their testimony during the course of a trial.⁶⁰ Having considered possible ‘cultural’ explanations for this phenomenon, Combs concludes that witnesses wilfully committed perjury, either for political reasons, such as securing a desired verdict, or personal reasons, such as gaining access to the Tribunal’s resources.⁶¹ This would imply that these were spaces that (even if inadvertently) work for the witnesses, but also that international courts, such as the ICTR, are, to all intents and purposes, spaces *devoid* of truth.

There are, however, several problems with Combs’ analysis. These include that Combs’ work only examines trials that deal with atrocities committed in the ‘Global South’, as she argues that there is less to be learnt from trials that addressed crimes committed in the ‘Global North’—such as at the ICTY—because witnesses there are more ‘like us’.⁶² This adds an orientalist undertone to her argument that is only amplified by Combs’ superficial treatment of possible ‘cultural’ explanations—this included witnesses’ ‘uneducated’ status and their poverty—to explicate shifts in witnesses’ narratives. I also refute the claim that the majority of witnesses wilfully and deliberately lied: a change within a witnesses’ testimony is not

⁵⁹ *Supra* note 23, 251–3.

⁶⁰ Nancy Combs, *Fact-Finding without Facts: The Uncertain Evidentiary Foundations of International Criminal Law* (Cambridge: Cambridge University Press, 2010), 4–10.

⁶¹ *Ibid.*, 4–10 and 101–55; and Nancy Combs, ‘Testimonial Deficiencies and Evidentiary Uncertainties in International Criminal Trials’, *International foreign Affairs* 14 (2009), 235–73.

⁶² *Supra* note 59, 5.

enough evidence to reach Combs' conclusions. Combs does not consider, for instance, how such changes might be accounted for by a difference in focus between the questions asked by the investigators and the trial counsel. In short Combs reaches too easily for the explanation that witnesses lied before really exploring the question in sufficient detail. As such I argue that attention needs to be paid to how and under what conditions might a witness's testimony have evolved over the course of retelling the 'same story' in order to find an alternative explanation that accounts for the shifts in narratives that occur over the course of a trial.⁶³

In sum, it is clear that the witnesses' (whether victim, perpetrator, or expert) relationship to the trial process needs to be re-evaluated in order to ascertain in whose image the archive was created and whose interests these courts served. This apparent 'clash of interests' between witnesses and these courts also points to another binary, and set of seemingly irresolvable tensions, that is often associated with these courts. For this suggests that there are at times conflicting interests between the actors from the international community, who set up these trials in order to contribute towards 'justice' and international peace and security, and the needs and expectations of witnesses (or the victims) of violence. This has been framed as being a conflict between the 'international' and the 'local', which has also been the subject of much academic debate in recent years.

International vs. Local

⁶³ See, *supra* note 29, 61. Moreover, there is the sense within Combs' work that there is something exceptional about the nature of testimony in international courts, rather than something that is an inherent quality in all acts of retelling a story. John Conley and William O'Barr, *Just Words: Law, Language, and Power* (Chicago: The University of Chicago Press: Second Edition, 2005), 166–7.

For some time now, there has been a concern that international criminal justice represents a new form of imperialism due to its fixated gaze on the Global South.⁶⁴ Whilst the Holocaust trials and those at the ICTY complicate this argument, the track record of international criminal justice does undoubtedly appear, at least, as a form of ‘White Man’s Justice’—an almost absurd form of victor’s justice, whereby those most powerful within the international system escape all (or at least most) scrutiny. Does, then, international criminal justice serve the ‘local’—those that experience and suffer violence directly—or those that gain most by the international system remaining as it is, namely those states from the Global North.

This concern also underpinned the most recent ‘turn’ in transitional justice: the local turn.⁶⁵ Beginning with key studies by Phil Clark on Rwanda’s *Gacaca* courts and most crucially Paul Gready’s article on ‘distanced justice’, transitional justice scholars have questioned the extent to which traditional transitional justice mechanisms, as modes of justice rooted in western thought and constructed through a western epistemology, have any possible value in non-Western communities and societies.⁶⁶ Rosemary Nagy took these arguments further and

⁶⁴ For more on this see Mark Kirsten, ‘In Withdrawal?’. (See Internet Materials listing.)

⁶⁵ Kelsall, *Culture under Cross-examination*, 8–16. For one of the earliest accounts to stress this see: Mark Drumbl, ‘Punishment, Postgenocide: from Guilt to Shame to *Civis* in Rwanda’, *New York University Law Review* 75:5 (2000), 1222–326.

⁶⁶ *Gacaca* courts (roughly translated as ‘justice amongst the grass’) are an adapted (and hence perhaps quasi) traditional justice mechanism which were formally used in Rwanda as a mode of communal dispute resolution. The Rwandan government revitalised this and added the possibility of criminal sanctions (fundamentally altering its prior nature) in order to help cope with their enormous backlog of suspected genocidaires held in custody. With the promise of lighter sentences in exchange for *full* confession (mirroring the SATRC model) it also brought with it a greater emphasis on restorative justice, and notions of truth-telling, forgiveness and healing. Phil Clark, ‘The Rules (and Politics) of Engagement: The *Gacaca* courts and Post-Genocide Justice, Healing, and Reconciliation in Rwanda’, in Clark and Kaufman, *After Genocide*, 300, and 307–10; Susan Thompson and Rosemary Nagy, ‘Law, Power and Justice: What Legalism Fails to Address in the Functioning of Rwanda’s *Gacaca* Courts’, *The International Journal of Transitional Justice* 5:1 (2011), 12–5; Drumbl, ‘Pluralising Justice’, 1316–22; Paul Gready, ‘Analysis: Reconceptualising Transitional Justice: Embedded and Distanced Justice’, *Conflict, Security and Development* 5:1, (2005), 3–21; Alexander Hinton, ‘Introduction: Toward and Anthropology of Transitional Justice’, in *Transitional Justice: Global Mechanisms and Local Realities After Genocide and Mass Violence*, ed. Alexander Hinton (Piscataway: Rutgers University Press, 2012), 5; Eric Stover and Harvey Weinstein, ‘Introduction: Conflict, Justice and Reclamation’, in Stover, *My Neighbour, My Enemy*, 4, 11; Kieran McEvoy, ‘Beyond Legalism: towards a Thicker Understanding of Transitional Justice’, *Journal of Law and Society* 34:4 (2007), 411–40; Minow, ‘Making History’, 174–85; and Kelsall, *Culture under Cross-examination*, 8–16.

forcefully (and convincingly) questioned the roots and origins not only of individual mechanisms of transitional justice, but *transitional justice as a whole*. By asking ‘who’, ‘when’, and ‘what’ transitional justice as a discourse focuses on, Nagy points to the biases and asymmetry currently rooted in transitional justice, as it continues to represent the interests of the powerful to the detriment of those that are ‘weaker’ within the international system.⁶⁷

It is, then, unsurprising that international courts are often seen unfavourably within transitional justice scholarship. Indeed, a number of scholars have questioned if the ICTR, as a mode of ‘western’ justice, could have ever served the needs of Rwanda.⁶⁸ Tim Kelsall similarly argued that due to its epistemological roots, international criminal justice struggles to comprehend non-western crimes.⁶⁹ In his exploration of the Special Court for Sierra Leone he found that even the hybrid nature of the court (which supposedly integrated a ‘local’ element into the procedure) could not overcome the gap between the ideas and ways of knowing rooted within the law and local Sierra Leonean culture. This was particularly the case when it came to the court’s less than adequate understanding of forced marriages, child soldiers, and magic.⁷⁰ Taking this further, Joseph Fink has argued that the deontological nature of international criminal law means that it is *inevitably* incapable of understanding the

⁶⁷ Rosemary Nagy, ‘Transitional Justice as Global Project: Critical Reflections’, *Third World Quarterly* 29:2 (2008), 275–89. As with other scholars, such as Simon Robins and Rama Mani, this has also led to an assault against the very idea of ‘justice’ that underpins transitional justice, as they call for a much broader understanding that focuses more directly on socio-economic and *transformative* justice. Paul Gready and Simon Robins, ‘From Transitional to Transformative Justice: A New Agenda for Practice’, *International Journal of Transitional Justice* 8:3 (2014), 339–61; and Rama Mani, *Beyond Retribution: Seeking Justice in the Shadows of War* (Cambridge: Wiley, 2007).

⁶⁸ Gready, ‘Reconceptualising Transitional Justice’, 11–3; Peter Uvin and Charles Mironko, ‘Western and Local Approaches to Justice in Rwanda’, *Global Governance* 9 (2003), 220; and Drumbl, ‘Punishment, Postgenocide’, 1314–26.

⁶⁹ Miriam Aukerman, ‘Extraordinary Evil, Ordinary Crime: a Framework for Understanding Transitional Justice’, *Harvard Human Rights Journal* 15 (2002), 47.

⁷⁰ Kelsall, *Culture under Cross-examination*, 229–54. See also Alison Des Forges and Timothy Longman, ‘Legal Response to Genocide in Rwanda’, in Stover, *My Neighbour, My Enemy*, 56; and Jessica Almqvist, ‘The Impact of Cultural Diversity on International Criminal Proceedings’, *Journal of International Criminal Justice* 4:4 (2006), 745–64.

specificity and cultural contexts within which violence occurs, as it generalises and abstracts episodes of violence to the detriment—here specifically referring to the relationship between Rwanda and the ICTR—of the local community.⁷¹

Parts of this argument are convincing, and it is hard, for instance, not to see that these courts regularly appear to fail to meet the needs and interests of communities affected by violence. Moreover, a particularly important element from this debate that will need to be considered when assessing the ICTR's archive, particularly in Chapters Two and Five, is the extent to which the epistemological roots of international criminal justice affect how violence was seen, accounted for and recorded with the archive. As such, the dissertation takes as a central concern the question of which, and whose, viewpoints, perspectives and interests drove the construction of the ICTR's archive, who and what were excluded from this.

However, this argument is not without its problems. First, this argument has been clouded by an almost orientalist praise of the inherent value of the 'local', which seems not always to be deserved.⁷² For instance, *Gacaca*, whilst undoubtedly revolutionary, also very much worked to embed the authoritarian power of the post-genocide regime in Rwanda and was, as Susanne Thompson and Nagy argue, relatively prescriptive as to how individuals were expected to participate, to the detriment of serving 'local' interests and producing a 'holistic' account of the violence that could contribute towards reconciliation.⁷³ The extent to which a

⁷¹ Joseph Fink, 'Deontological Retributivism and the Legal Practice of International Jurisprudence: The Case of the International Criminal Tribunal for Rwanda', *Journal of African Law* 49:2 (2005), 115–23. Payam Akhavan has similarly noted his concern with what happens when the legal idiom attempts to generalise between different types of traumatic experience. Payam Akhavan, *Reducing Genocide to Law: Definition, Meaning, and the Ultimate Crime* (Cambridge: Cambridge University Press, 2012), 1–78 and 141–4.

⁷² See also Elizabeth Drexler, 'The Failure of International Justice in East Timor and Indonesia', in Hinton, *Transitional Justice*, 50–1.

⁷³ Thompson and Nagy, 'Law, Power and Justice', 20–30.

division between the local and the international can be maintained is also questionable. Post-colonial scholarship, for instance, has shown that as a result of colonial encounters both the local (here the Global South) and the international (the Global North) co-constituted each other, fundamentally altering each other's existence, *and* that these encounters had a significant impact on the nature of international system, *and* international law.⁷⁴ This, then, complicates the notion of 'imposed' or 'distanced' nature of international criminal justice.

It is also important to acknowledge that calls for prosecutions repeatedly *originate from the Global South*. Such was the case when Rwanda requested the creation of the ICTR because of its demand *for justice*. As this also begins to suggest, it is important that even as scholars try to question this imbalance of power, we must also recognise the agency and authority that exists within these communities and the role that they have played in the construction, and practice, of international criminal justice. This is particularly needed when exploring the relationship between Rwanda and the ICTR, where Rwanda's effective utilisation of the process (discussed throughout) needs to be accounted for.⁷⁵ What this leads back to is a need to understand the processes through which international criminal courts like the ICTR function, in whose interests, and what this means for the question of *whose archive*?

⁷⁴ Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge: Cambridge University Press, 2005), 1–12 and 250–3; Diane Otto, 'Subalternity and International Law: the Problem of Global Community and the Incommensurability of Difference', *Social and Legal Studies* 5:3 (1996), 339–54; Makau Mutua, 'Savages, Victims, and Saviors: the Metaphor of Human Rights', *Harvard International Law Journal* 42:1 (2001), 212–4; Sundhya Pahuja, 'The Postcoloniality of International Law', *Harvard International Law Journal* 46:2 (2005), 460–8; and Frédéric Mégret, 'From "Savages" to "Unlawful Combatants": a Postcolonial Look at International Humanitarian Law's Other', in *International Law and its Others*, ed. Ann Orford (Cambridge: Cambridge University Press, 2006), 265–318.

⁷⁵ Kingsley Moghalu, *Rwanda's Genocide: The Politics of Global Justice* (Basingstoke: Palgrave Macmillan, 2005), 101–23; and Victor Peskin, *International Justice in Rwanda and the Balkans: Virtual Trials and the Struggle for State Cooperation* (Cambridge: Cambridge University Press, 2008), 170–206.

Politics vs. Law

As this also suggests, international courts are seen as very much ‘politicised’ spaces where different competing interests influence how these trials unfold. This much has been clear since *Nuremberg*, which is often seen as an example of victor’s justice, as the Allies’ crimes were swept under the rug. The political nature of *Eichmann* has also already been noted, as it was used to tell a particular story about the Jewish people in order to justify the existence of, and demonstrate the need for, the Israeli state.⁷⁶ Whilst Wilson believed that the truly international nature of the late twentieth century international courts (which marked a significant development from the previous attempts) offered the chance of a less politicised form of justice, the work of Rachel Kerr and Kenneth Rodman in particular demonstrates that these remain spaces that are strongly influenced by politics.⁷⁷

Kerr showed that politics influenced each stage of the ICTY, from its creation by the UNSC under Chapter 7 of the UN Charter, to its reliance on diplomacy to function, and to its political purpose, which was to bring violence to an end and to assist in the peace process.⁷⁸ Similarly Rodman has shown how the dependency of international courts on states for enforcement, staff assistance, and finance, makes them reliant on the political whims of states.⁷⁹ However, whilst this is the case, Kerr, in a similar fashion to Wilson, importantly

⁷⁶ Thomas Segev, *The Seventh Million: The Israelis and the Holocaust* (New York: Hill and Wang, 1993), 47; Arendt, *Eichmann in Jerusalem*, 48; Cole, *Selling the Holocaust*, 69; and *Supra* note 23, 124.

⁷⁷ Richard Wilson, ‘Judging History: The Historical Record of the International Criminal Tribunal for the Former Yugoslavia’, *Human Rights Quarterly* 27:3 (Aug, 2005), 921–3. See also Frédéric Mégret, ‘The Politics of International Criminal Justice’, *European Journal of International Law* 13:5 (2002), 1261–84.

⁷⁸ Rachel Kerr, *The International Criminal Tribunal for the Former Yugoslavia: An Exercise in Law, Politics, and Diplomacy* (Oxford: Oxford University Press, 2004), 2; Kenneth Rodman, ‘Justice as a Dialogue between Law and Politics’, *Journal of International Criminal Justice* 12:3 (2014), 437–469.

⁷⁹ Rodman, ‘Justice as a Dialogue between Law and Politics’, 437–469.

argues that, at the ICTY, politics stopped at the door of the courtroom, where law and justice took over; the process, whilst political, was never *politicised*.⁸⁰

These studies well capture the courtroom as being an interface of law and politics, and they also take steps towards pulling down the dichotomy of ‘peace vs. justice’ that dogged transitional justice for some time.⁸¹ In fact, Kerr has shown with her assessment of the ICTY that not only *can* justice function alongside a peace process but that it can form a *crucial part* of this, and that international law *needs* politics to function.⁸² Consequently, there is scope to see that there is a *harmonious* relationship between law and politics and that these courts can work in the interests of political and legal actors *as well* as the affected communities.

There is, however, also room to take this understanding of the relationship between law and politics further and push back against seeing these as two necessarily distinct disciplines doing essentially different tasks. This follows Chris Reus-Smit’s call to see law as both constitutive and constituting of politics.⁸³ First, as Kerr acknowledges the judges at the ICTY were very aware of their role in developing and expanding jurisprudence.⁸⁴ Duncan Kennedy has argued in respect to municipal courts that these types of (and in fact all) jurisprudential developments are the result of the judges making *political and ideological* decisions as they settle tensions between what are often ambiguous and conflicting laws when deciding a

⁸⁰ *Ibid.*, 208–9; Mégret, ‘Politics of International Criminal Justice’, 1264.

⁸¹ For example, see Cherif Bassiouni, ‘The Perennial Conflict between International Criminal Justice and Realpolitik’, *Georgia State University Law Review* 22:3 (2005), 541–61.

⁸² Kerr, *The International Criminal Tribunal for the Former Yugoslavia*, 212. See also Humphrey, ‘International Intervention’, 495–505.

⁸³ Chris Reus-Smit, ‘The Politics of International Law’, in *The Politics of International Law*, ed. Chris Reus-Smit (Cambridge: Cambridge University Press, 2004), 14.

⁸⁴ Kerr, *The International Criminal Tribunal for the Former Yugoslavia*, 8–9 and 211.

case.⁸⁵ This is presumably even more so with international criminal law, as its relative infancy leads to greater ambiguity about what the law *is*, which consequently requires greater levels of interpretation from the judges. This, in turn, seems to have likely resulted in judges having greater space to impose particular ideological and political perspectives within their legal decisions. Moreover, with Edkins' and Elizabeth Dauphinee's assertion that courts play a role in perpetuating violence within the international system, it becomes important to determine to what extent these decisions reproduced what might be considered 'problematic' political discourses.⁸⁶ As such, it is important to ask: what political and ideological positions underpinned the judicial decision making at the ICTR? Did this adjudication process, as Edkins and Dauphinee suggest, render some forms of violence legitimate, and hence some individuals as legitimate targets of violence? And if so, who and why?

This also points towards an understanding of law that moves past seeing it as a neutral set of timeless rules. Instead law is recognised for its performative, dynamic and political nature, as the statutes, rules of evidence and procedure, and customary law (the bedrock of the legal process in international courts)⁸⁷ are constantly re-interpreted, contested and regenerated by different actors within the courtroom and beyond.⁸⁸ As Sally Merry has emphasised, a wide variety of different actors (e.g. representatives of NGOs, international organisations,

⁸⁵ Duncan Kennedy, *A Critique of Adjudication (fin de siècle)* (London: Harvard University Press, 1997).

⁸⁶ Elizabeth Dauphinee, 'War Crimes and the Ruin of Law', *Millennium—Journal of International Studies* 37:1 (2008), 52; Edkins, *Trauma*, 5–15 and 190–1 and 201. See also Wendy Brown, "'The Most We Can Hope for ...': Human Rights and the Politics of Fatalism", *The South Atlantic Quarterly* 103:2 (2004), 452–3 and 460–1; Charlesworth and Kennedy, 'Afterword', 406; Franke, 'Gendered Subjects of Transitional Justice', 823; Jacques Derrida, 'Force of Law: The 'Mystical Foundation of Authority'', in *Deconstruction and the Possibility of Justice*, ed. Drucilla Cornell *et al.* (London: Routledge, 1992), 6; Mégret, 'From 'Savages' to 'Unlawful Combatants'', 312–7; Kris Brown and Fionnuala Ni Aolain, 'Through the Looking Glass: Transitional Justice Futures through the Lens of Nationalism, Feminism and Transformative Change', *International Journal of Transitional Justice* 9:1 (2015), 127–49; and David Kennedy, 'Reassessing International Humanitarianism: The Dark Sides'.

⁸⁷ John Hagan and Ron Levi, 'Crimes of War and the Force of Law', *Social Forces* 83:4 (2005), 1503.

⁸⁸ For similar interpretations of law, see Stanley Fish, 'The Law Wishes to Have a Formal Existence', in Sarat and Kearns (eds), *The Fate of Law* (Michigan: The University of Michigan, 1993), 159–208; and Peter Brooks and Paul Gewirtz (eds), *Law's Stories: Narrative and Rhetoric in the Law* (London: Yale University Press, 1996).

academics, lawyers and witnesses) take international norms and fundamentally *remould* these as they are put into practice, which, as has been argued by John Hagan and Ron Levi, actualises law, *making it real*.⁸⁹ This is not to state that these actors have *carte blanche* over how law is mobilised, and it is important to understand how substantive and procedural rules of the courtroom also *constrain* practice.⁹⁰ It is therefore important to explore how the relationship between the rules and actors involved in the production of law at the ICTR influenced the shape and nature of the archive and to what effect.

Second, O'Barr's and Conley's examination of the treatment of sexual violence testimony in municipal courts shows that the presence of patriarchal discourses means that this type of testimony is less likely to be believed.⁹¹ Campbell's work on the ICTY demonstrates that similar issues plague international courtrooms, as gendered discourses worked to bring female testimony, particularly concerning rape, under greater levels of scrutiny compared with testimony relating to other crimes.⁹² Both Catherine McKinnon's and Binaifer

⁸⁹ Sally Engle Merry, 'New Legal Realism and the Ethnography of Translational Law', *Law and Social Inquiry* 31:4(2006), 978. John Hagan and Ron Levi speak in relation to international criminal justice of 'how the coercive apparatus of criminalisation is *actualised* through prosecutorial and court practices' (emphasis added). Hagan and Levi, 'Crimes of War', 1499 and 1502-4. See also Rosemary Byrne, 'The New Public International Lawyer and the Hidden Art of International Criminal Trial Practice', *Connecticut Journal of International Law* 243:25 (2010), 247; and Frederic Mégret, 'International Criminal Justice as a Juridical Field', *Champ Pénal/ Penal Field* 13 (2016) (see Internet Materials).

⁹⁰ Mégret, 'International Criminal Justice as a Juridical Field'.

⁹¹ A 'double bind' is placed over a rape victim's testimony that sees the chances of it being accepted by the courtroom diminish. This is the case, O'Barr and Conley argue, because the victim either adopts a powerful speech style and is deemed unreliable for either failing to play out their gender 'properly' or because it indicates that the witness is 'too together' to have experienced a traumatic experience like rape, or they adopt powerless speech style, conform to the gendered stereotype, and are seen as irrational and unreliable. Conley and Barr, *Just Words*, 32-9. O'Barr similar shows that this also effects other types witnesses, often from lower socio-economic backgrounds, who, like victims of sexual violence, tend to adopt what they refer to as 'powerless' speech styles William O'Barr *et al.*, 'Speech Style and Impression Formation in a Court Setting: the Effects of 'Powerful' and 'Powerless' Speech', *Journal of Experimental Social Psychology* 14:3 (1978), 266-79.

⁹² Martha Walsh, 'Gendering International Justice: Progress and Pitfalls at International Criminal Tribunals', in *Gender Peace: Women's Struggle for Post-War Justice and Reconciliation*, ed. Donna Pankhurst (Abingdon: Routledge, 2009), 33-4; Campbell, 'Testimonial Modes', 92-5; Conley and O'Barr, *Just Words*, 32-9; Nicola Henry, 'Witness to Rape: The Limits and Potential of International War Crimes Trials for Victims of Wartime Sexual Violence', *The International Journal of Transitional Justice* 3:1 (2009), 130-1; Kelsall, *Culture under Cross-examination*, 225-55; and Catherine MacKinnon, 'The ICTR's Legacy on Sexual Violence', *New England Journal of International and Comparative Law* 14:1 (2007), 214-5.

Nowrojee's work further highlights the systematic way in which sexual violence has been treated as a secondary concern by international courts generally, and the ICTR specifically, and Martha Walsh—building on the work of Hilary Charlesworth—has emphasised how international criminal justice systematically excludes the voices of women.⁹³ As such, how do political discourses, such as gender, end up influencing the way *legal* decisions are made and hence influence the contents of the archive?

Finally, there is a need to consider the effects of the internal politics at work within these institutions. As Eltringham has pointed out, whilst 'the Tribunal' is often thought of as a homogenous space whereby the different organs work together in pursuit of a shared, singular goal, in fact there was a wide spread of conflicting views between, and even *within*, each of the Tribunal's organs.⁹⁴ How, then, did this mode of politics affect the trial process, how was the Tribunal changed over time, and how did this influence the archive?

The preceding section helps form the basis for this dissertation. It demonstrates the importance of considering a variety of different factors when understanding how and why international courts like the ICTR function as they do and the possible implication that this has for the way in which the archive was constructed—a crucial stepping stone in pursuit of the question whose archive. These include, the way in which law and politics frame this process, the roles played by different types of actors (such as lawyers and witnesses), and the

⁹³ Binaifer Nowrojee, "'Your Justice is too Slow': Will the ICTR Fail Rwanda's Rape Victims?", *United Nations Research Institute for Social Development* (November 2005), 1–28; Walsh, 'Gendering International Justice', 32–9; MacKinnon, 'Sexual Violence', 214–20; Catharine MacKinnon, 'Crimes of War, Crimes of Peace', *UCLA Women's Law Journal* 4 (1993), 59–87. Issues of race can also undercut these processes, as has been argued by Minow in a discussion about the role of race in US court decisions on the administration of the death penalty. Martha Minow, *Making All the Difference: Inclusion, Exclusion, and American Law* (London: Cornell University Press, 1990), 66–7; Martha Minow, 'Foreword: Justice Engendered', *Harvard Law Review* 101:10 (1987), 27.

⁹⁴ Nigel Eltringham, "'When We Walk Out, What Was It All About?': Views on New Beginnings from within the International Criminal Tribunal for Rwanda', *Development and Change* 45:3 (2014), 543–5.

possible tensions that can exist between these actors' interests. As has also been argued, however, the current framing of enquiries into international criminal justice around a series of the dichotomies needs to be challenged. Moreover, whilst offering a starting point, as was identified at the end of each sub-section, many fundamental questions remain unanswered. How and why do international courts, such as the ICTR, produce the accounts of violence they do? What role do different actors, particularly witnesses, have in this process? What does this mean for what these trials tried to achieve? And ultimately the central question, whose archive?

The dissertation will argue that whilst numerous actors played an important role in the creation of the archive, not least the witnesses themselves, overall, the manner in which witnesses, and Rwandan society more generally, were treated by the Tribunal shows that the Tribunal and its archive were not created with their interests in mind. Rather it was the Tribunal's legal actors, along with the outside political actors at the UNSC and within the Rwandan government, that all appeared to benefit from the way in which the archive was created. Before setting out this argument in greater depth and outlining the structure of the empirical chapters, I will present the supporting methodology.

Methodology

The Archive

Within this dissertation the archive performs the dual role as an empirical site of investigation and as a theoretical and methodological tool. As an empirical site, the archive consists of the records that have been produced by the Tribunal and related institutions (i.e. other UN organs) as a result of Tribunal's execution of its mandate to prosecute those responsible for the 1994 Rwandan genocide.⁹⁵ This can be viewed and put to use in three different ways. First, the archive is the site where the totality of the Tribunal's records that it has produced about the Rwandan genocide are deposited, the analysis of which forms the central component of the thesis as I determine what accounts of the past have been produced by Tribunal. Second, this thesis is also concerned with *why* that record exists as it does. To understand this, the conditions that surround the Tribunal, and make different statements possible, and *hence leave a material and physical trace within the accounts of violence rendered at the Tribunal*, must be explored too. To do this, the physical archive that needs to be examined exceeds the records depositary in Arusha, and must also include documents produced across multiple other sites that have interacted with, and influenced, practices at the Tribunal. These include, for instance, documents deposited at the UN's archive that relate to the Tribunal.

Finally, as this begins to point to, the archive is both an empirical site of interest in and of itself, but also a portal through which it is possible to understand the institution that it sits

⁹⁵ S/RES/955, 08/11/1994. The ICTR's statute can be found at: <http://unictr.unmict.org/en/documents/statute-and-creation> (last accessed 24/05/2017).

within.⁹⁶ The archive is the site where the practices and discourses that make up the Tribunal, as discussed more below, sediment and reveal their material effects and as such give a window through which to understand the manner, purpose and function of this institution and the wider discourses that it speaks to.⁹⁷ This is to take seriously the constituting and constitutive nature of the archive as it both captures and produces a particular ontology of the social world, so as to explore what particular reality is conjured and *made real* through the construction of the archive.⁹⁸ It is for this reason too that the archive is always, as Foucault argues, a politicised space, and where knowledge becomes wedded to power, as certain ways of knowing, seeing, and being are privileged through their inclusion in the archive and others are excluded. To return to the opening quote:

We should admit that power produces knowledge (and not simply by encouraging it because it serves power, or by applying it because it is useful); that power and knowledge directly imply one another; that there is no power relation without the correlative constitution of a field of knowledge, nor any knowledge that does not presuppose and constitute at the same time power relations.⁹⁹

It is this consciousness of the particular, exclusionary and political nature of the archive that also forms the bedrock of Foucault's archaeological methodology, which provides the theoretical and methodological basis of this thesis, and marks the second use of the archive here.¹⁰⁰ The archive here is the totality of all *possible* statements that can be legitimately

⁹⁶ *Supra* note 33, 251–3.

⁹⁷ Brien Brothman, 'Prefect Present, Perfect Gift: Finding a Place for Archival Consciousness in Social Theory', *Archival Science* 10 (2010), 160–2;; Richard Brown and Beth Davis–Brown, 'The Making of Memory: the Politics of the Archive, Libraries and Museums in the Construction of National Consciousness', *History of Human Sciences* 11:4 (1998), 18–20; and Verne Harris, 'The Archival Sliver: Power, Memory and Archives in South Africa', *Archival Science* 2:1 (2002), 63–86.

⁹⁸ *Supra* note 33. For instance, as Elizabeth Kaplan has shown, an exploration of the objects and records consigned to records offices and museums (very much types of archives) in Britain throughout the nineteenth century offers an insight into the particularities of modern nationalism throughout this time and the very logic and purpose that underpinned this. Elisabeth Kaplan, 'We Are What We Collect, We Collect What We Are: Archives and the Construction of Identity', *The American Archivist* 63 (2000), 126–51. See also Benedict Anderson, *Imagined Communities* (London: Verso Books, 2006), 164–70.

⁹⁹ Foucault, *Discipline*, 28.

¹⁰⁰ Foucault, *Archaeology of Knowledge*, 14–15, 27, 32–8, 84–99, and 117.

made within a particular discourse,¹⁰¹ and the task becomes to determine the ways and means through which the contents of an archive is both limited and made possible: what rules determine what can and cannot be recorded, and from which perspective an archive's records are produced, and whose voices and perspective might be excluded from this process.¹⁰² These rules, which Foucault terms the 'rules of formation',¹⁰³ can be determined by uncovering the regularity with which statements and records are made for (and excluded from) the archive.¹⁰⁴ Foucault categorises these statements as subjects, objects, enunciative modalities (the different subject positions possible within a discourse), and concepts.¹⁰⁵ As Colin Gordon summaries,

This project of an archaeology is conceived as the study of forms of knowledge and rationality at the level of their material manifestation as bodies of discourse composed of finite sets of oral or written utterances. The aim is to render these discourses accessible to description and analysis as constituting a specific order of historical reality whose organisation is irreducible to either the history of the careers, thought and intentions of individual agents (the authors of utterances) or to a supra-individual teleology of discovery and intellectual evolution (the truth of utterances).¹⁰⁶

It is, then, the ability of Foucault's understanding of the archive to pull together a disparate array of principles, practices and rules to account for the *totality* of what *can* be said within a particular discourse that makes it such a valuable concept for this dissertation, as I look to explain why it is that the accounts of violence rendered within the Tribunal exist as they do.

¹⁰¹ Foucault, *Archaeology*, 143, 145-8; and Foucault, 'The Order of Discourse', 58.

¹⁰² Foucault, *Archaeology of Knowledge*, 127; Giorgio Agamben, *Remnants of Auschwitz: The Witness and the Archive* (New York: Zone Books, 1999), 137-44; Thomas Osborne, 'The Ordinarity of the Archive', *History of Human Sciences* 12:2 (1999), 53; Giles Deleuze, *Foucault*, translated by Seán Hand (London: University of Minnesota Press, 1986), 3-8; and Gordon, 'Afterword', 243-4.

¹⁰³ Foucault, *Archaeology of Knowledge*, 38.

¹⁰⁴ *Ibid.*, 27, 32-8 and 84-99.

¹⁰⁵ *Ibid.*, 38. It must be stressed here that the 'archaeological' approach is not so prescriptive to mean that the analysis must be rooted within these four categories and that all statements must be neatly compartmentalised within one of them. As Foucault's work makes clear this is neither possible nor fruitful. Instead, what Foucault offers is a set of tools to help unpack a problem (how discourses are formed and operate), perhaps more akin to a theoretical *approach* or *ethos*.

¹⁰⁶ Gordon, 'Afterword', 243-4.

A number of other comments are required about the approach adopted here. First, the notion of enunciative modalities directs the focus of the analysis to also consider *who* is permitted to contribute to the construction of knowledge, where, and in what ways. As the quote from Gordon suggests, however, this is not about focusing on individual subjects and their conscious interventions within a field. Rather, this is about considering which types of actors are permitted to act in certain ways and to what effect.¹⁰⁷ Second, Foucault's approach urges scholars to examine, in addition to the regularity with which statements are made and who is permitted to make them, *how they relate to each other*. Foucault stresses that it is in the relationships between these types of statements that a discourse generates its specificity.¹⁰⁸

Foucault's idea of apparatus is also important here. Foucault describes an apparatus as an assemblage of heterogeneous discourses and non-discursive sites that intervenes in a situation in the attempt to solve a particular problem.¹⁰⁹ This notion as such captures the complexity of international criminal justice as a tool that is aimed at securing 'international peace and security' and is created as result of a variety of different actors from different fields (lawyers, politicians, and even social scientists acting as experts) and drawing on a variety of discourses (e.g., humanitarian and human rights law). This, however, also draws our attention to additional pathways that need to be explored. First, an apparatus intervenes, as Foucault argues, to solve a particular 'problem'. This 'problem', however, is not 'discovered' but is *created* in a particular way *through the apparatus* and this generates the apparatus' purpose, or 'strategic function' (which also forms a key anchor point around which its components —

¹⁰⁷ *Supra* note 106, 72, 92–5 and 99.

¹⁰⁸ *Ibid.*, 4 and 42; Giles Deleuze, 'What is a Dispositif?', in *Michel Foucault: Philosopher*, trans. Timothy Armstrong (Hemel Hempstead: Harvester Wheatsheaf, 1992), 160.

¹⁰⁹ Michel Foucault, 'The Confession of the Flesh', in Gordon, *Power/ Knowledge*, 194–5.

subjects, objects, etc.—assemble).¹¹⁰ This, then, begs the question of how a particular problem is imagined and what an apparatus' strategic function is. Finally, when exploring an apparatus, it is important to understand the rules and logics that function within the various discourses that populate, and thereby create, the apparatus, but also how these discourses *relate to one another*.¹¹¹

Consequently, this, like other modes of discourse analysis, is about identifying common linguistic structures (or patterns) that are present within the narratives constructed in a particular setting—here a tribunal.¹¹² This approach argues that it is possible to suggest what a particular discourse demands of a statement to be considered legitimate by identifying the consistency with which the repetition of certain features occurs within these statements.¹¹³ By extension this points to the importance of analysing what is excluded, and hence deemed illegitimate within a particular discourse, by looking for what is absent or silenced.¹¹⁴ As

¹¹⁰ For instance, the asylum, and associated disciplines and discourses, as an apparatus did not 'discover' madness as a problem and then go about trying to overcome this, but very much *produced* madness as a particular problem that needed to be solved in a particular way. With this, moreover, it can be said that the *strategic function* of the apparatus was determined as a result of how it was that madness was imagined. See Foucault, Michel, *Madness and Civilisation: a History of Insanity in the Age of Reason*, translated by. Richard Howard (London: Routledge, 2003); Foucault, *Archaeology*, 4 and 42; and Deleuze, 'What is a Dispositif?', 160.

¹¹¹ Foucault, 'The Confession of the Flesh', 194–5.

¹¹² See Jonathan Potter and Margaret Wetherell, *Discourse and Social Psychology: Beyond Attitudes and Behaviour*, (London: Sage, 1987); Jonathan Potter and Margaret Wetherell, 'Discourse: Noun, Verb or Social Practice?', *Philosophical Psychology* 3:2 (1990), 205–17; Stephanie Taylor, 'Locating and Conducting Discourse Analytic Research', in *Discourse as Data*, ed. Margaret Wetherell *et al* (London: Sage, 2001), 5–49; and Robin Wooffitt, *Conversation Analysis and Discourse Analysis: a Comparative and Critical Introduction* (London: Sage, 2005), 49–51.

¹¹³ Jonathan Potter and Margaret Wetherell, 'Discourse Analysis and the Identification of Interpretive Repertoires', in *Analysing Everyday Interpretations*, ed. Charles Antaki (London: sage, 1988), 171. Another possible approach to this project would have been to conduct a conversation analysis (CA). However, its focus on the micro-issues of linguistic exchanges does not make it suitable for a project such as this which focuses on a large number of sources. Moreover, CA is more concerned with what can be learnt in the interaction between different speech acts in a conversation, rather than the content of that conversation, which is of central importance for the analysis here. I also take issue epistemologically with the notion that CA should only read the 'micro' and not move towards 'macro' conclusions unless the data is 'self-evident'. For an account that demonstrates the possibility of using CA in courtroom analysis see: Ronald Atkinson and Paul Drew, *Order in Court: The Organisation of Verbal Interaction in Juridical Settings* (Atlantic Highlands: Humanities Press, 1979), 1–33.

¹¹⁴ Wooffitt, *Conversation Analysis and Discourse Analysis*, 45

such, a central part of the analysis throughout the dissertation is exploring what accounts of violence are permitted to enter the courtroom, in what form, and which are prevented from entering the courtroom, and what are the similarities that exist between these. This will allow me to determine what rules explain why these accounts exist as they do and also who was permitted to contribute to their construction and to what effect. More specifically, within each trial I will trace how the witnesses' stories evolved as a trial progresses and compare this to other instances of narrative formation in order to ascertain how the apparatus imposes certain restraints on what can be testified to.¹¹⁵

A shortfall of Foucault's ideas, however, is that these methodological and theoretical models struggle to account for change within these systems, or at least to explain *why* change occurs. This is important because even a cursory look makes it is apparent that international criminal justice has changed considerably between *Nuremberg* and the ICTs of the 1990s (such as the role afforded to the witnesses). This omission is primarily due to Foucault's apparent rejection of individual agency. For Foucault, the individual is more a conduit for the discourse than a conscious individual operating with purpose. If individuals are produced by and function solely within the discourse, along with the objects, subjects, and concepts of these discourses, it is hard to imagine how individuals might think *outside of* the hegemonic discourse and induce changes to practice or ways of thinking or being, at least over relatively short time-frames.¹¹⁶ As such, whilst I retain the importance of Foucault's archaeological methodology for understanding how knowledge is produced in particular ways, I also believe

¹¹⁵ *Supra* note 106, 74.

¹¹⁶ Foucault's understanding of discourses does allow for new types of statements to be made (which remain products of the discourse whilst they continue to abide by the same rules that maintain the regularity of the discourse), and he also signifies that change is possible and new discourses can emerge when statements are made which force a reformulation of the rules of formation. But, it is unclear how, when or why these shifts occur. Moreover, Foucault's model is more conducive for looking at longer term ('epochal') shifts rather than temporally more restricted studies like this.

it's important to supplement this with a theory and approach that can better account for changes in practice within particular fields and institutions, where this is required.

In this respect, I have found Pierre Bourdieu's field analysis to be instructive. Fields are, in essence, limited domains of action that are populated by different agents fulfilling different roles, whereby all agents agree, more or less, to abide by a set of rules about how each should function within the field and about the broader purpose of that field.¹¹⁷ These rules, norms, and assumptions—often unspoken—form the *Habitus* of a particular field.¹¹⁸ A variety of different forms of capital are available to these different agents, but these forms of capital are unevenly valued, and unevenly distributed, between the agents meaning that a hierarchy of agents is produced within the field.¹¹⁹ So far this is relatively similar to Foucault's understanding of individuals and agency. With both Foucault and Bourdieu, individuals very much function within a system that is already in existence and perform specific predetermined roles. Moreover, Foucault's understanding of enunciative modalities mirrors the concern here for the different roles (subject positions) that can be taken up within the field. The difference, however, is that Bourdieu introduces a notion of competition between agents within the field in order to account for change.¹²⁰ Agents compete with each other to acquire capital, but also crucially to change the ascribed value of different types of capital within the field, which determines their position in the hierarchy as each type of agent has different levels of access to different types of capital.¹²¹ This, however, not only results in a change in the value of the different forms of capital, but also a shift in practices within the

¹¹⁷ Pierre Bourdieu, *Outline of a Theory of Practice* (Cambridge: Cambridge University Press, 1995), 10–6.

¹¹⁸ Pierre Bourdieu, 'The Force of Law: toward a Sociology of the Juridical Field', *The Hastings Law Journal* 38 (1987), 807; and *Supra* note 121, 72–96.

¹¹⁹ *Supra* note 121, 13–4. The hierarchy between different types of agents is captured within Bourdieusian language as the 'divisions of labour'. Here Bourdieu argues that within a field there is a constant struggle between actors, who simultaneously oppose each other, and rely on each other, for their position within the field and for the existence of the whole field itself. Bourdieu, 'The Force of Law', 808.

¹²⁰ Hagan and Levi, 'Crimes of War', 1503.

¹²¹ *Supra* note 121, 195–8; and Mégret, 'International Criminal Justice as a Juridical Field'.

field.¹²² What this demonstrates is that, as a result of competing interests, the way in which a field functions, and even the purpose of that field, is likely to be subjected to change over time.

Dixon and Tenove have already shown the value of using this concept in relation to international criminal justice.¹²³ They argue that the international criminal justice field was created through the overlapping of the three global fields of diplomacy, criminal justice, and human rights advocacy and that international criminal justice's agents were (and are) drawn from these three fields.¹²⁴ Each of these groups of agents rely on different forms of authority (a term that is analogous to Bourdieu's term 'capital'), which are replicated in both their own field and within international criminal justice: delegated, legal, moral, and expert.¹²⁵ Diplomatic agents rely largely on delegated authority; legal agents draw principally on legal and moral authority; human rights agents draw on moral authority; and all agents employ expert authority.¹²⁶ As such, throughout the analysis I will identify which agents appeared to be driving shifts in practice within the field, and how, or if, this offers evidence of the shifts in the value of different types of authority available for different agents. The importance of this will become particularly clear in Chapters One and Six.

¹²² Change in the practices and importance of the adjacent fields in relation to the international criminal justice, then, affects the amount of authority that the agent brings from the adjacent fields into international criminal justice, and simultaneously—as these agents function as recognisable agents within both fields—reconfigures: the hierarchies of power within the international criminal justice field; and what functions as the most 'valued' authority and the means through which this is acquired. Dixon and Tenove, 'International Criminal Justice', 4.

¹²³ Dixon and Tenove, 'International Criminal Justice'. See also John Hagan and Ron Levi, 'Crimes of War and the Force of Law', *Social Forces* 83:4 (2005), 1499-1510. Frederic Mégret has interestingly called for an expansion of the understanding of this field to include practices and actors that *exceed* the parameters of the courtroom, something that this study takes seriously as it, for instance, considers the role of political agents at the UN, and in Rwanda and other member states. Frederic Mégret, 'International Criminal Justice as a Juridical Field', *Champ Pénal/ Penal Field* 13 (2016) (see Internet Materials).

¹²⁴ Dixon and Tenove, 'International Criminal Justice', 1–2 and 20.

¹²⁵ *Ibid.*, 11–2.

¹²⁶ *Ibid.*, 16–7.

Case Selection

This dissertation draws on material from three trials at the ICTR in order to explore how and why international trials produce particular accounts about past violence and what this means for the question *whose archive?* From the large number of cases heard at the ICTR, I selected three trials that were spread over the lifespan of the Tribunal: Jean–Paul Akayesu (1998); Emanuel Bagambiki, Samuel Imanishimwe and André Ntagerura, otherwise known as *Cyangugu* (2004); and Jean–Baptiste Gatete (2011).¹²⁷ For a detailed description of these trials please see the Appendix.

These trials were chosen for a number of reasons. From a methodological perspective, whilst no two trials could ever represent exactly the same sequence of events, it was important to select three trials that were dealing with relatively similar charges, in order to ascertain more clearly what factors influenced how the Tribunal accounted for the violence and whether there were any patterns in how this occurred. Each of these trials was concerned with capturing how the national level orchestration of the violence linked to the local level and, importantly, each set of indictments contained a spread of charges that covered: genocide, crimes against humanity and war crimes; attacks against places of refuge (which was possibly the most common type of crime documented by the Tribunal); and evidence relating to sexual violence crimes. I also elected to study *Cyangugu* both in order to represent the ‘multi–accused’ cases that were common in the second phase of the Tribunal’s history (from 1999 until about 2003), but also as a failed trial—from the prosecution’s perspective. Not only

¹²⁷ These dates represent the year of the trial judgements.

were Bagambiki and Ntagerura acquitted completely, but on appeal Imanishimwe's genocide conviction was overturned, meaning that whilst Imanishimwe was convicted of crimes against humanity and war crimes no defendant at the trial was convicted for genocide. As such, this allowed me to explore what was distinctive about these moments when the prosecution failed and the defence succeeded. Moreover, this trial, along with *Gatete*, marked another failure, which concerned the OTP's prosecution of sexual violence charges. This counter-balanced the success story offered by *Akayesu* (known as the first trial to have found that rape could constitute an act of genocide), which is often seen within the literature as an aberration rather than the norm.¹²⁸ The timing of these three trials was also important, since each captured a distinctive moment in the Tribunal's history, including the first ever contested trial, the introduction of the completion strategy in 2003 (see Chapter Six), and one of the last trials. The spread of these trials over the lifespan of the Tribunal also meant I could examine whether the shifting political landscape outside of the courtroom affected how, and which, accounts of violence were produced.

Sources

My analysis drew on three main types of sources. The first, and the main, set was each trial's case files, which contain: pre-trial statements, indictments, trial transcripts (of both the trial and appeals hearings), trial exhibits, motions, decisions, and judgements (of both the trial and appeals hearings). Each of these will be examined to determine the rules and regularities with which the different agents in the courtroom constructed accounts of violence, paying particular attention to the role played by witnesses. As such, the trial transcripts for each trial,

¹²⁸ MacKinnon, 'Sexual Violence', 211–21.

where the witnesses took centre stage, form the bedrock of the thesis. In addition to this, I drew on documents from the ICTR's other trials (particular from judgements) to supplement my analysis of these three trials where required.

A number of challenges, however, were encountered with accessing some of these documents. The first was my initial failure to realise that witness pre-trial statements were, the vast majority of the time, not accessible to the public. As such, for insight into these, I have relied on moments in the trials when legal counsels used pre-trial statements in order to try to undermine a witnesses' in-court testimony or when issues specific to the investigations and the taking of pre-trial statements were raised (both relatively frequent occurrences). Second, due to delays in digitising parts of the archive, I was not able to access audio-visual recordings of the trials, as I had initially hoped. As such I have only had access to trial transcripts in order to piece together the way in which the Tribunal constructed its accounts of violence. As Eltringham has pointed out, much is lost in transcripts, most notably the tone of the testimony, the unspoken interactions between the different participants, and, importantly, silences.¹²⁹ I am aware of these limitations, and this no doubt affects my findings. However, I believe that with the types of questions that I am seeking to answer (essentially looking at patterns in the ways in which accounts of violence are discursively produced) the negative effects of this will be limited. Moreover, an upside to only analysing trial transcripts is that it has meant that I could examine more of these and consequently more trials than otherwise feasible.

¹²⁹ *Supra* note 29, 68; and Nigel Eltringham, 'Judging the "Crimes of Crimes": Continuity and Improvisation at the International Criminal Tribunal for Rwanda', in Hinton, *Transitional Justice*, 206–10.

Second, in order to see how the political landscape and the strategic function of the court was constructed and changed, I also drew on administrative documents held largely in the UN's online archive,¹³⁰ including: external reports (such as by the UN's Fifth Committee), internal reports (particularly ICTR biannual reports, and completion strategy updates to the UNSC and UN General Assembly [UNGA]), strategy documents (such as those by the Office for Internal Oversight Services), and UNGA and UNSC discussions of the ICTR. Where possible, I also attempted to place these UN discussions within a broader context and tried to analyse as many policy briefings and reports that were produced by the UNSC and Secretary General (UNSG) on similar topics (such as peace-building and transitional justice) as possible. Again, there were a number of sources that I had hoped to obtain but could not since these have not yet been made public, including documents relating to the Tribunal's legacy policy. However, there were sufficient sources available here for this not to adversely affect my findings. Moreover, the interviews I conducted partially compensated for these absences.¹³¹

Finally, I conducted 19 semi-structured interviews with actors from each of the Tribunal's organs to elucidate how the trials' participants approached the trials at the Tribunal, how changes both inside and outside the Tribunal affected this, and also what they understood the Tribunal's strategic function to be. These interviews also allowed for a potential dissonance to come to the fore as individual actors had the chance to express their motivations and experiences of the Tribunal in a manner that might challenge how I understood these processes to have unfolded.¹³² These interviews were largely conducted whilst I was a 'legal

¹³⁰ <http://www.un.org/en/documents/index.html> (last accessed 30/08/2019)

¹³¹ I found these documents both on the Tribunal's website, where they store the annual reports, but also by searching the UN's online archive. To narrow my search I limited the results to records that contained the exact term 'International Criminal Tribunal for Rwanda'.

¹³² Eltringham, 'When We Walk Out', 545.

researcher’ at the ICTR from April–July 2015, where I was offered the chance by James Arguin—head of the appeals division—to work on the ‘Genocide Story Project’ (GSP). This project, which was the initiative of Arguin, attempted to construct a narrative of the genocide, a form of ‘official history’, based only on the Tribunal’s adjudicated facts from the trial judgements, aimed at improving the ‘relevance’ of the Tribunal to the outside world. When I left Arusha in July 2015, I had managed to complete a rough draft of the narrative (building on considerable work done prior to my arrival) which essentially consisted of the adjudicated facts (kept, for the most part, as exact quotes from the judgements) arranged to tell both a chronological and thematic account of the genocide (e.g. how the genocide spread throughout the country, and key sites of killing, such as roadblocks). To my knowledge, the project has not, however, been taken any further to date. This, and my time at the Tribunal requires a number of additional comments.

Working at the Tribunal brought with it a number of advantages and disadvantages for my research. Fundamentally, a large amount of what I have been able to achieve would not have been possible had I not had a position at the Tribunal. Without this, I have no doubt that I would have conducted a tiny fraction of the interviews that I ultimately conducted, as many of these, especially with the senior figures at the Tribunal, were arranged thanks to Arguin. That I already had a professional relationship with several of the interviewees meant that the interviews were, on the whole, less guarded than might otherwise be the case with ‘elite interviews’ (and this certainly seemed so when I compare these to the interviews I did with people I didn’t know). Additionally, had I not been able to go to Arusha in person, I would not have been able to gain access to many of the documents that I relied upon. Whilst these were all public documents, the issues with the online archive, especially when I began my research, meant that it would have been very difficult for me to get the case files I used

without knowing some of the archivists and being able to meet with them in person. Finally, I was also, as a result of my time at the Tribunal, permitted to observe the final appeals hearing and to witness some of the preparations that went into this.

Whilst I must stress that these interviewees were only ever supplementary to my archival work, I cannot, however, claim that my interview pool was an objective sample of Tribunal staff over the lifespan of the Tribunal. Interviewees were largely drawn from the OTP (where I worked) and were mainly those that were still at the Tribunal at the end. Against this, however, is the fact that many of the interviewees had been at the Tribunal for a considerable part of its existence, and so provided an incredibly valuable pool of information as they offered a window into large periods of the Tribunal's existence where they had witnessed many of the changes that interested me. It is also important to note that I agreed with the Tribunal not to utilise any observations made whilst working there. Whilst it is impossible not to subconsciously draw on some experiences from my time at the Tribunal, I have not explicitly used anything in this dissertation that comes from either private discussions with members of the Tribunal nor any observations made whilst I was working there. I do not, however, think that drawing on this would have altered my dissertation's findings, and I also had more than enough on record from the interviews to avoid doing this. This agreement extended to my work on the GSP, and this is one of the reasons why I do not discuss this at any great length here. However, the GSP is also excluded for reasons of coherence. This dissertation is concerned, for the most part, with the way in which the archive has been constructed and so is essentially 'backwards' looking. The GSP, in its attempts to shape how the genocide is understood by the outside world is, instead, essentially 'forward' looking in its nature. As discussed further in the conclusion, there is a need to consider the 'afterlife' of the archive, which would also need to address the GSP, and this will form the basis of a future research project.

Despite this agreement, there is no doubt that I was affected by my time spent at the Tribunal. It was significant for me to see the Tribunal as a ‘living organism’, rather than an abstract concept that I read about and studied, which affected people’s lives. I certainly felt very strongly—and in a way that I hadn’t thought I would—about seeing ‘genocidaires’ on trial. This, in particular, brought into focus more clearly my obligation to be more reflective and more critical about my own position and research, ensuring that I pursued this as meticulously as possible. However seemingly abstract this type of research appears, its topic is something that is starkly real for many people: those accused of acts of genocide, those that suffered at the hands of it, and those that now partake in the legal redress of this. So, whilst I do not think this has tempered my critique and criticism, I hope that at the very least it has made it more rigorous.

In order to facilitate the analysis of these sources, I used Nvivo coding software.¹³³ It must be stressed however, that I refrained from using any of the more quantitative tools (which I would argue offer only limited value to the types of questions asked here) and instead relied on some of the more basic functions, such as being able to organise all of the sources into one database. Additionally, Nvivo offers the tools with which it is possible to keep track of various patterns identified in these sources, providing something akin to a digital highlighter. This is made possible by creating a number of ‘nodes’ which can then be linked to specific passages in each individual source. I created the nodes around themes that I was interested in exploring more, as identified during the literature review, such as ideas about ‘victims’ or ‘perpetrators’, or how procedural rules influenced what could and could not enter the courtroom. Having tagged all relevant sections in these sources (which I did alongside taking

¹³³ See <http://www.qsrinternational.com/nvivo/what-is-nvivo> (last accessed 20/12/2017).

more conventional notes), I could then revisit each of these highlighted section (Nvivo collates all references to each node in one place) to ascertain the patterns that existed with how these objects, subjects and concepts were constructed, and what rules more generally determined what could enter the courtroom and in what form. Piecing together the results from this in-depth qualitative research produced the analysis that follows.

The Dissertation

This dissertation is an exploration of the contents of the ICTR's archive, in order to determine *whose* archive. To this end, the empirical chapters are divided as follows.

Chapter One analyses the UN's intervention in Rwanda as a starting point to understand the Tribunal's (and therefore the archive's) strategic function. It argues that, whilst state interest and bureaucratic stumbling blocks go some way to explain why the UN failed to 'do more' during the genocide, this alone is not sufficient. Instead, it highlights the significance of the way in which the UNSC, and the 'international community' more generally, understood the violence in Rwanda, and the relationship of the international community to that violence. This rendered the genocide something that was not only outside of the UNSC's responsibility but also as something that could not be stopped. As will be argued, a key turning point towards the UN 'doing more' was when the UN increasingly understood (and presented) the problem within a legal framework when it labelled the violence 'genocide'. This both rendered the international community as the victim of the crime and also offered a potential solution to the violence in the form of trials. This formed the basis of how the ICTR came to be seen as a potential solution to the violence in Rwanda. The final section of the chapter will

explore the other hopes and expectations that were attached to the Tribunal as it was created and through this identify who the important ‘stakeholders’ at the Tribunal were. This discussion also captures the strategic function of the Tribunal and its archive as they were created.

Chapter Two explores the extent to which the archive was produced solely as a result of the prosecution’s legal interests. The prosecution played an important role in determining the scope and function of the archive, as it was the prosecution that were given the main responsibility for interpreting the Tribunal’s mandate after the UNSC created the ICTR under Resolution 955. The chapter will show the significance of the prosecution’s legal priorities and goals in determining how it produced its records, as these decisions influenced the scope of the accounts of violence produced. However, as will be shown, a number of important non-legal discourses and priorities also came to shape these accounts. This chapter introduces the idea of the ‘conditions of truth’ as a concept that can bring together the various facets that led the prosecution’s account to be created as it was. The final section will show that, whilst it was clear that at first the prosecution pursued extra-legal goals, over time they became more focused simply on the legal output of the trials, which in turn altered the sense of who it was that the prosecution was trying to assist. Why this was the case will be explored in Chapter Six.

Chapter Three builds on Chapter Two as it considers the role played by prosecution witnesses in the archive’s construction. Whilst this reveals that witnesses performed a very significant role in determining the shape and contents of the archive, it also begins to point to the fact that these interventions were only permitted with the consent of the legal actors of the

courtroom. The chapter also explores the RPF's interventions during these trials under the guise of defending the interests of victims. This again shows that actions that appeared driven by a desire to empower the victims of the genocide were, underneath the surface, driven by alternative (and political) motives. Combined this brings caution to the idea of these courts becoming 'victim-centred' spaces, something that will be further explored in Chapter Six. This chapter highlights the importance of the different roles afforded to different actors as the archive was constructed and as a result introduces another concept, the 'processes of truth', to help to explain why the archive exists as it does.

Chapters Four and Five consider the influence that the interests and priorities of the defence and judges had, respectively, on the archive. Chapter Four argues that the defence drew on three different narratives structures (which I have labelled: 'did what they could'; chaos and diminished responsibility; and 'counter-histories'), each governed by the 'conditions of truth', along with a number of cross-examination and other interventionist strategies, when trying to establish that their clients were innocent. Like Chapters Two and Three, this also considers how witness testimony was used in the production of these accounts. The chapter concludes that, whilst these accounts focused on the accused, the specificity of the accused and their experiences were lost within them. In this vein, it also argues that during the ICTR's trials the defendant was, to an extent, 'de-centred' within the trial process, which challenges the idea that this was essentially a 'perpetrator-centric' space.

A number of comments are required about the division of the chapters here as there is an imbalance between the focus on the prosecution and their witnesses (which receives two separate chapters) and the defence and their witnesses (which is condensed into one). Beyond

space, this was for two reasons. The first was because, as I argue at the end of Chapter Four, whilst a number of similar constraints cut across both prosecution and defence witnesses, it was possible to far more succinctly and neatly compartmentalise the different types of narrative structures employed by the defence and their witnesses' than it was for the prosecution and their witnesses. This suggested both greater homogeneity in defence witness accounts but also what appeared to be a less dynamic relationship between the defence and their witnesses. This both justified treating these witnesses separately, but also allowed me, as such, to be more economic with my analysis here and combine the defence and their witnesses into one chapter. I also decided that it was inappropriate to divide the chapters between 'lawyers' and 'witnesses', as I was interested in exploring how the defence and prosecution approached their tasks differently.

Chapter Five similarly explores the judges' influence over the archive. This is both in their management of the trials, but most importantly in the way they constructed the judgements, where again the importance of the conditions and processes of truth come through. This shows once more both the influence of the legal actors within the courtroom in dictating the court's accounts of violence and also the complex relationship that they had with the witnesses. Whilst on the surface the witnesses continued to play an important role in shaping the judgements, underneath this lay a more problematic relationship. This will be highlighted by showing how the judges' attitudes towards witnesses changed over time and highlighting the influence of gendered and patriarchal discourses on the judges' decisions.

The final empirical chapter explores the question of why the prosecution's and judges' approach shifted over time and the way in which this impacted on the role afforded to the

witnesses. By extension this also explores what this meant for purpose of the archive. It offers two answers for this. First, as the Tribunal progressed the legal agents were able to take greater control over the proceedings as their novelty wore off. However, more important in this respect was the intervention of the UNSC, when in 2003 it ordered the Tribunal to close down as soon as possible. With this all extra-judicial goals were pushed to the side, and the witnesses were treated in an increasingly utilitarian manner. This narrowing of the Tribunal's strategic function is explored further at the end of the chapter as I show a number of problematic ways in which the Tribunal interacted with Rwandan society. With this, moreover, a final concept of the 'politics of truth' is introduced as I demonstrate the importance of taking into consideration the external political landscape to the Tribunal when exploring why the archive existed as it did.

Overall, this dissertation will argue that the archive was the product of the interactions between the Tribunal's different stakeholders who were driven by different interests and assigned different roles within the apparatus. This formed a key element of the rules which, along with the influence of legal and non-legal discourses, account for why the archive is as it is and are captured by what I have termed the 'conditions', 'processes', and 'politics' of truth. When considering the question of *whose archive*, the analysis demonstrates that the actors that drove the construction of the archive with greatest consequence were: legal actors within the court, due to their consistent control over which statements were made during trials (something which only grew over time); the Rwandan state, which whilst denied possession of the archive fundamentally shaped its appearance in crucial ways (most notable over their successful obstruction of investigations into RPF crimes); and the UNSC, who overall had the most significant influence over the way the Tribunal functioned. Indeed, the UNSC decision in 2003 that the Tribunal was to close as quickly as possible had significant

consequences for both what was recorded within the archive and how the records were produced. Whilst Chapter Three highlights the significant contribution that witnesses made to construction of the archive, ultimately the manner in which their interests were consistently disregarded demonstrates that this process was never driven by a concern for their needs. This could, as Chapter Six makes clear, have a significantly negative effect on their wellbeing.

This dissertation offers several contributions to the literature. First, it offers a sustained analysis of the ICTR as an institution, amongst the first to explore the Tribunal over the duration of its existence.¹³⁴ This provides a key insight into the evolution of international criminal justice at a key moment in its history. Second, the analysis advances an understanding of how and in whose interest international courts function. This highlights the political nature of these courts, and it also pushes forward the current understanding of the relationship between politics and law, as I examine how politics influenced the very way that the trials functioned and what constituted ‘justice’. This also leads to questions about the current legitimacy of international criminal justice. Third, I offer a re-evaluation of the role of the witness in this process, who I will argue has so far been rendered too passive within the trial process. Fourth, in determining how it is that the archive has been produced, I provide an understanding of why it is that particular stories about past acts of violence have been told within these courts, and hence what potential value they have, and what role that they might play, in the future.

¹³⁴ See also Thierry Cruvellier, *Courts of Remorse: Inside the International Criminal Tribunal for Rwanda* (Madison: University of Wisconsin Press, 2010).

Chapter One: The UN and the Rwandan Genocide

Introduction

This chapter looks at the lead up to the creation of the ICTR, and explores the UN's interventions in Rwanda before, during and after the genocide. It examines: the logic and rationalities that underpinned these interventions; the link between the UN's understanding of the violence in Rwanda and its sense of responsibility to Rwanda; and how these factors intersected with other interests at play and other events happening elsewhere in the world—particularly the crisis in the former Yugoslavia. This will primarily focus on the UNSC—and especially the P5—who largely controlled the UN's engagement with Rwanda. This exploration explains both how the Tribunal came to be seen as a solution to the genocide and how it resulted in the ICTR's specific strategic function at the Tribunal's outset, which ultimately had a bearing on: how the Tribunal functioned; what it was to achieve; who it was to serve; and how and in what manner it was to construct the contents of the archive.

The UN in Rwanda

The conflict between the Rwandan Patriotic Front (RPF) and the Rwanda government entered a new phase of increased intensity when the ‘civil war’ broke out in 1990.¹ In February 1993, after three years of conflict—where the early signs of the genocide had already been noted by international observers—the two sides agreed to a ceasefire and started a peace process that resulted in the signing of the Arusha Peace Accords (APA).² With the assistance of France, which convinced Rwandan President Juvénal Habyarimana of the merits of the agreement, both the RPF and the Rwandan government lobbied the UN to send in a UN monitoring force as part of the APA to ensure the maintenance of the ceasefire and to aid both parties in implementing the agreement.³ After initial reluctance the UNSC increasingly came around to the idea of intervening in the resolution of the conflict.⁴ After all, in a rare occurrence, all parties *wanted* the UN’s presence, and the task was seen as a simple handholding exercise. Over time the UN saw Rwanda as an ‘easy win’, a chance to rebuild the UN’s shattered reputation after their ill-fated intervention in Somalia.⁵

The APA were finally signed on 4 August 1993. As Michael Barnett has argued, however, despite the UN provisionally agreeing to a UN presence in Rwanda prior to this, the bureaucratic cogs of the UN—with its fragmented organisation and endless protocols—led to

¹ What to label the conflict is a contentious issue, as will be explored later. It is usually described as a civil war, but this does not really capture the international nature of the violence due to regional and international involvement of countries such as Zaire, Burundi, Uganda and France.

² Samantha Power, *A Problem from Hell: America and the Age of Genocide* (London: Flamingo, 2003), 338; S/1999/1257, *Report of the Independent Inquiry into the Actions of the United Nations during the Rwandan Genocide*, 16/12/1999, 6; and S/PV.7155, *7155th Meeting*, 16/04/2014, 4.

³ Michael Barnett, *Eyewitness to Genocide: The United Nations and Rwanda* (London: Cornell University Press, 2002), 60–1.

⁴ S/1999/1257, 41.

⁵ *Supra* note 3, 13 and 65; Linda Melvern, *A People Betrayed: The Role of the West in Rwanda’s Genocide* (London: Zed Books: 2nd Edition, 2009), 94.

a delayed introduction of a UN force in Rwanda.⁶ It took until October 1993 for the UN to finally approve the United Nations Assistance Mission for Rwanda (UNAMIR), which was only fully deployed in Rwanda in November 1993.⁷ Even then, the strength of the force and the scope of its mandate were far less than was initially anticipated (due to both the UK's and the US's successful attempts to water down the mandate to make it less costly and some genuine concern for the capabilities of an overstretched UN peacekeeping office), and even when 'fully formed' it lacked basic equipment.⁸ This meant that the reduced force with its reduced mandate never reached the foreseen capacity and by late February UNAMIR was so weak that they had to stop foot patrols.⁹ From the very outset, then, both a lack of 'political will' and certain bureaucratic practices influenced how the UN responded to the violence in Rwanda, something that was also seen in the failure to pass on to UNAMIR the Special Rapporteur for Rwanda's 1993 report, which suggested genocide had already occurred during the conflict.¹⁰

Any hopes that Rwanda was going to be a quick win for the UN were quickly revised. The deteriorating conditions inside the country, the government's obstruction over the installation of a 'broad based transitional government'—one of the key pillars of the APA—and a spike in politically motivated assassinations made it apparent that something more was going on than just the mere stalling of the peace process. If any doubt existed over the potential seriousness of the situation then this should have been finally set straight by General Dallaire's (head of the UNAMIR forces on the ground) famous 11 January 1994 cable. This cable passed on key information to the UN Secretariat that Dallaire had received convincing

⁶ *Supra* note 3, 62–3.

⁷ S/1999/1257, 8.

⁸ Melvern, *People Betrayed*, 94; S/1999/1257, 30–32; and *Supra* note 3, 70–1.

⁹ S/1999/1257, 40; and Melvern, *People Betrayed*, 116.

¹⁰ S/1999/1257, 31.

evidence from an informant (Jean–Pierre) that extremist Hutu elements, determined for the APA to fail, had begun to systematically prepare for a campaign against the Tutsis by compiling lists of potential victims, stockpiling weapons, and converting the civil defence forces into armed militia.¹¹ The cable—sent from Dallaire to Kofi Annan—was never passed on to the UNSC for consideration, and when Dallaire requested permission to intervene and seize the weapons that had been stockpiled, he was told that those actions would exceed his mandate and that he should not raid the arms caches.¹²

This response is often presented as the watershed moment in the UN’s involvement in Rwanda. Adam LeBor goes as far as to suggest that raiding the caches, as Dallaire had wanted, could have stopped the genocide.¹³ Showing at best negligence, and at worst calculated indifference, this (in)action, it is argued, set a trend for what came next, when the UN stood idly by whilst the massacres of up to one million people occurred. During the 100 days of killing, which began when President Habyarimana’s plane was shot down, the (in)action of the UNSC and the UNAMIR forces meant both parties became complicit in the killing as they gave the genocidaires a green light to act with impunity.¹⁴ A number of events encapsulate this failure, including: the failure to protect Prime Minister Agathe Uwilingiyimana; the downsizing of the UNAMIR force to just 270 after the death of ten Belgian troops; the withdrawal of all westerners whilst leaving all Rwandan staff to their own fate—which was also one of the only moments when UNAMIR was authorised to use increased levels of force; and the consistent failure to label the violence as genocide.¹⁵

¹¹ *Ibid.*, 10.

¹² Adam LeBor, *‘Complicity with Evil’: The United Nations in the Age of Modern Genocide* (London: Yale University Press, 2006), 168; and Melvern, *People Betrayed*, 107–9.

¹³ LeBor, *Complicity with Evil*, 168–70; and Melvern, *People Betrayed*, 107–9.

¹⁴ LeBor, *Complicity with Evil*, 177; Helen Hintjens, ‘Explaining the 1994 Genocide in Rwanda’, *The Journal of Modern African Studies* 37:2 (1999), 274; and Peskin, *International Justice* (see Intro., n. 75), 155.

¹⁵ Melvern, *People Betrayed*, 134–70.

Three explanations are frequently offered as to why the UN failed to do more during the Rwandan genocide. The first revolves around the idea of state interest, here meaning that a *lack* of interest in Rwanda geographically, economically, and strategically meant it was thought that Rwanda was not worth spilling blood over.¹⁶ Both the US and UK, who throughout this period remained the most influential members of the UNSC, not only lacked interest in Rwanda but were actively hostile to any major intervention. Both remained more concerned with the former Yugoslavia and South Africa; Rwanda, in comparison, offered no strategic value.¹⁷ This argument is bolstered by the Clinton's administration unveiling of the PDD-25 *during* the genocide, which was a presidential directive that essentially produced a checklist that would determine whether or not the US would intervene in a situation.¹⁸ Based on these criteria, Colin Powell, then Joint Chief of Staff, argued:

As long as I am chairman of the JCSs, I will not agree to commit American men and women to an unknown war, in an unknown land, for an unknown cause, under an unknown commander, for an unknown duration.¹⁹

It was almost as if the PDD-25 were written based on the US' perception of the (lack of) importance of Rwanda. Rwanda was such a non-issue for the Clinton administration that Clinton did not convene even one meeting with his senior advisors to discuss this matter.²⁰ Not only does the lack of interest explain the lack of willingness to do anything, but it also explains why even when action was agreed upon it was systematically under-resourced. The UK's and US's desire to not get involved any further meant, moreover, that throughout the violence they repeatedly, and deliberately, avoided using the 'G-Word', with a US State Department memo warning: 'Be careful. Legal at State was worried about this yesterday—

¹⁶ See, *Ibid*; William Wallace, 'British Foreign Policy after the Cold War', *International Affairs* 68:3 (1992), 423–42; Mark Curtis, *The Ambiguities of Power: British Foreign Policy Since 1945* (London: Zed Books, 1995), 180–242.

¹⁷ Linda Melvern and Paul Williams, 'Britannia Waived the Rules: the Major Government and the 1994 Rwanda Genocide', *African Affairs* 133:401 (2004), 3–11; and Power, *Problem from Hell*, 359.

¹⁸ Power, *Problem from Hell*, 342–3.

¹⁹ Melvern, *People Betrayed*, 191.

²⁰ *Supra* note 18, 335.

Genocide finding could commit USG [the US government] to actually “do something”—an unthinkable proposition.²¹

Barnett offers a slightly different perspective on this, as his focus falls less on the individual member states’ involvement in Rwanda, than on the UN as an institution. Barnett argues that the UN’s bureaucratic machine, with its own rules and practices, defined which actions were considered desirable during the violence in Rwanda. He argues that the UN’s response in Rwanda has to be understood in light of the UN’s catastrophic intervention in Somalia, which put the UN’s bureaucracy into a ‘self-saving’ mode.²² Whilst a number of scholars highlight the ‘shadow of Somalia’, Bartlett offers a more nuanced account, suggesting that this self-saving mode created a space within which it became morally acceptable *not to act* in situations—such as Rwanda—where the potential for failure would mean that the organisation itself may suffer further.²³ This was reinforced by a tendency, Barnett argues, that exists within all bureaucratic organisations. Referencing Arendt, Barnett notes:

The banality of evil bears an uncomfortable resemblance to the banality of bureaucratic indifference. A bureaucratic mentality inspires ordinary individuals to tolerate evil. Bureaucratic virtue is not found in tolerating the existence of immoral acts. Note that we are no longer speaking of unrelenting pressures but rather of the predispositions of all bureaucracies.²⁴

This helps to explain decisions that cannot be accounted for by state interest alone. These include the decision by Annan *not* to pass on Dallaire’s cable, the generally poor flow of

²¹ *Ibid.*, 359.

²² *Ibid.*, 4–12.

²³ *Ibid.*, 175.

²⁴ *Ibid.*, 165.

information to the UNSC, and Boutros-Ghali's failure to apply pressure on the UNSC to do more.²⁵

These accounts only take us so far, however, for in the face of such large-scale violence how could the UNSC justify their inaction to the outside world, and why was there not greater clamour amongst the wider international community, and particularly the populations and media of the main international powers (i.e., those best positioned to lead a successful intervention) for something to be done? In order to understand this, it is important to understand the third strand of the argument, which is that the UN and the media (mis)understood (or deliberately misrepresented) the violence in Rwanda, as being either simply part of the civil war between the RPF and the Rwandan government, or rooted in 'tribalism', which meant it was therefore something that could not be stopped.²⁶ As will be argued below, this helped to construct Rwanda as a helpless case where nothing could be done, where the 'international' was separate from the violence that consumed 'the local' and so did not make any further intervention appear necessary. Whether or not this understanding of the violence really did shape what it was thought could be done, or whether this was a skilful deployment of rhetoric by the US and UK and other states to avoid becoming more involved, this demonstrates the importance of such discursive understanding in legitimising certain forms of (non)action. Moreover, these same ways of understanding also came to influence the creation of the ICTR.

²⁵ Barnett notes, for example, that Boutros-Ghali's rhetoric was much weaker when discussing Rwanda than regarding Somalia. *Supra note 3*, 119–20.

²⁶ *Supra note 18*, 373; Anne Chaon, 'Who Failed in Rwanda, Journalists or the Media?' in *The Media and the Rwandan Genocide*, ed. Alan Thompson (London: Pluto Press, 2007), 162–3; Alan Kuperman, *The Limits of Humanitarian Intervention: Genocide in Rwanda* (Washington: Brookings Institution Press, 2001), 25–8; Linda Melvern, 'Missing the Story: the Media and the Rwanda Genocide', in Thompson, *Media and the Rwanda Genocide*, 208; Lindsey Hilsum, 'Reporting Rwanda: the Media and the Aid Agencies', in Thompson, *Media and the Rwanda Genocide*, 172; and Alan Kuperman, 'How the Media Missed the Rwanda Genocide', in Thompson, *Media and the Rwandan Genocide*, 256.

Understanding Rwanda

Throughout the UNSC's discussions concerning the violence in Rwanda, the language drawn upon by the member states was peppered with a distinctive 'Othering' of both the nature of the violence in Rwanda and of Rwanda itself. The violence became something that almost appeared natural to Rwanda, simply an inevitability; its potential had always existed, and whilst it had been contained in the past it now 'erupted' uncontrollably.²⁷ This belief in Rwanda's innate tendency towards violence was also emphasised as the UNSC presented Rwandan history as a never ending 'cycle of violence', producing the sense of self-reinforcing, perpetual violence.²⁸ The Othering came through most strongly in the repetitive use in official UN documents of similar linguistic phrases to describe the killing: 'orgy of violence', 'blood bath', 'tribal', 'carnage let loose', and 'barbarity'.²⁹ This way of understanding the violence also dominated the western media's coverage of the genocide, particularly in the right-wing press, where discussions were underpinned with the same descriptions of the violence, focusing on the 'tribal' nature of the killing and the 'bloodthirsty' savages.³⁰

²⁷ S/PV.3368, *3368th Meeting*, 21/04/1994, 3–4; and S/PV.3377, *3377th Meeting*, 16/05/1994, 7.

²⁸ This was further reinforced by constant references to the 'Rwandan tragedy', which emphasised the inescapable and inevitable nature of the violence. S/PV.3368, 2–4; and S/PV.3337, *Provisional Verbatim Record of the Three Thousand Three Hundred and Thirty-Seventh Meeting*, 17/02/1994, 12.

²⁹ S/PV.3337, 4; and A/48/PV.93, *487th Session: 93rd Meeting*, 14/04/1994, 2 and 4; S/PV.3377, 7; and E/1994/SR.8, *Provisional Summary Record of the 8th Meeting*, 14/06/1994, 7.

³⁰ Kuperman, 'How the Media Missed the Rwanda Genocide', 256–60; 'Britons Marooned by Massacre in the Mist', *Daily Mail*, 11/04/1994; 'Safely Home after Hell of Rwanda', *Daily Mail*, 13/04/1994; 'Massacre of Orphans', *Daily Mail*, 04/05/1994; 'Faces of Suffering Amid the Slaughter', *Daily Mail*, 16/05/1994; 'Paratroopers in Race to Rescue', *Mail on Sunday*, 10/04/1994; 'Rwanda Bloodbath Toll Hits 500,000', *Mail on Sunday*, 15/05/1994; 'Innocents in a Hospital of Hell', *Mail on Sunday*, 22/05/1994; and 'The Lake of Death; 40,000 Bodies Float Down River from Rwandan Massacre', *Daily Mail*, 23/05/1994. This position needs to be nuanced slightly as the left-wing press, in the UK at least, did have a better grip on what was happening. They, for instance, identified the largely one-sided nature of the violence and the targeting of the Tutsis early on and that this was something detached from the civil war. 'Thousands Massacred in Rwanda', *The Guardian*, 12/04/1994. However, even this was peppered with a distinctive othering. See, for examples: 'Blood Bath at the Bottom of the Barrel', *Guardian*, 08/04/1994; and 'Rwanda PM Killed as Troops Weak Carnage', *Guardian*, 08/04/1994; 'French Lead Flight From Rwanda', *Guardian*, 11/04/1994.

Within the UNSC not all states responded in the same way to Rwanda or drew on the same Othering discourse. The Non-Aligned countries, along with the New Zealand and Czech delegations, more accurately described the violence as a genocide, being primarily directed against the Tutsis, and also called for greater intervention, advocating the strengthening of the UNAMIR force at the time when the consensus appeared to be for total withdrawal.³¹ Yet, despite these dissident voices, the overwhelming understanding of the violence was constructed within this discursive reality worked to Other the violence.

It must be stressed that this way of understanding the violence was completely unjustified. The genocide in Rwanda was *not* random nor something that just ‘erupted’, and most certainly was not ‘tribal’, but was the result of careful state-led coordination, where a political elite produced the conditions whereby the masses (for a variety of reasons) would participate in a plan that would, like all genocides, produce a ‘stronger’ state and society. This was *not* the consequence of a ‘failed’, or absent, state as these descriptions suggested, but, if anything, a state functioning at full capacity, where its organs (administration, military, security, etc.) were put to work, as was a sophisticated media strategy, to devastating effect. Moreover, the description of this being simply an ‘internal’ affair concealed the very international nature of the conflict, particularly evident through France’s role in supporting the *genocidaires throughout* the genocide. Rather, this perspective of the violence resulted from the entrenched view of Africa as the ‘dark continent’.³² Within this discourse, it is possible to see clear traces of Chinua Achebe’s famous description of the West’s portrayal of Africa as ‘the other world, the antithesis of Europe and therefore of civilisation, a place where a man’s vaunted intelligence and refinement are finally mocked by triumphant

³¹S/PV.3377, 15–6; S/PV.3391, 3391st Meeting, 20/06/1994, 2; and S/1999/1257, 20–1.

³² Whilst the term ‘Western’ is a problematic one, this better encapsulates the states and publics being referred to here than other possible terms, such as the ‘Global North’, since within the UNSC it was mainly the UK, US and France that controlled how the violence in Rwanda was addressed.

bestiality’.³³ Within this conception it came as no surprise that violence ‘descended’ upon the ‘tiny African state’.³⁴

The Western media also matched the P5’s greater interest in the violence in the former Yugoslavia.³⁵ *The Guardian* newspaper, which throughout the genocide was possibly the only UK media outlet to consistently refer to the violence as genocide, captured much of this:³⁶

The collapse of Yugoslavia is a particular crisis for Europe. It's our doorstep, our house even [...]. Ending the war is in our interests as nations, not just in our interests as peace-loving people. That's one of the differences between Bosnia and Rwanda.³⁷

This language was repeated in the descriptions of violence by UK MPs, which relied on the same logic that drove PDD–25, where based on a particular calculation the Yugoslavian conflict became ‘our’ problem, whereas Rwanda—a distant place—was for someone else to deal with.³⁸ Anne Chaon has noted that even *Le Monde* (which would be expected to pay greater attention to Rwanda given French interest and involvement) published 1665 articles on the former Yugoslavia and only 756 on Rwanda in 1994.³⁹

³³ Chinua Achebe, ‘An Image of Africa’, *Massachusetts Review* 18:4 (1977), 784.

³⁴ ‘Thousands Die in Orgy of Bloodletting’, *Daily Mail*, 09/04/1994.

³⁵ Chaon, ‘Who Failed in Rwanda’, 162.

³⁶ ‘Blood at the Bottom of the Barrel’, *Guardian*, 08/04/1994; ‘Foreigners Flee Bloody Horrors of Rwanda’, *Guardian*, 11/04/1994; and ‘UN Troops Stand by and Watch Carnage’, *Guardian*, 12/04/1994.

³⁷ ‘Aid Agencies Condemn UN Pull-out from Rwanda’, *Guardian*, 23/04/1994.

³⁸ S/1999/1257, 44. Rwanda’s lack of significance to the UK government was perhaps best seen by their attempts to avoid discussing this in Parliament, with the first time-tabled debate only taking place on 23 May 1993. Tony Worthington speech, *Hansard: written answers to questions*. House of Commons, London, UK (hereafter *Hansard HOC*), 23/05/1994. All discussions of Rwanda were also driven by opposition MPs and Lords, and throughout, Rwanda remained a problem for someone else to deal with and was portrayed in othering language that meant that little could be done about it. For examples see Lord Henley speech, *Hansard: Written Answers to Questions*. House of Lords, London, UK, (hereafter referred to as *Hansard Lords*), 29/04/1994; John Reid speech, *Hansard HOC*, 4/05/1994; and Baroness Chalker speech, *Hansard Lords*, 19/05/1994; Douglas Hurd speech, *Hansard HOC*, 15/06/1994; Bruce Grocott speech, *Hansard HOC*, 12/04/1994.

³⁹ Chaon, ‘Who Failed in Rwanda’, 162.

There was something about the violence in the former Yugoslavia that meant that violence *was* of concern to Western states (and particularly those within the P5) and was, as a result, something that could and should be stopped. It is also important to recall here that a crucial turning point in the calls for intervention in the former Yugoslavia was the Holocaust-esque imagery of the Muselmann behind the barbed wire of camps such as Omarska and Trnopolje that signified in 1992 that something similar to one of the last great horrors to befall Europe was happening again. There were no similar symbols to ignite this same passion from Rwanda, which continued to be portrayed as representing bestial acts of violence committed by the ‘Other’.⁴⁰ As Dallaire also noted: ‘I was self-conscious about saying the killings were “genocidal” because, to us in the West, “genocide” was the equivalent to the Holocaust or the killing fields of Cambodia’.⁴¹ There was simply never a clamour—or at least not until it was too late—for something to be done. Chaon sums this up by citing a *New York Times* article that uncritically accepted the state of affairs:

No member of the UN with an army strong enough to make a difference was willing to risk the lives of troops for this ‘failed central African nation-state with a centuries-old history of tribal warfare and deep distrust of outside intervention’. [The articles headline read:] ‘For the West, Rwanda is not worth the political candle.’⁴²

This nomenclature of violence drastically reduced the type of action the UNSC saw as both possible and desirable, and also lessened what was expected by western publics. This description of the violence had two effects on these discussions about interventions as it meant both that nothing could be done and also that there was no sense that the UNSC was responsible to do more to help stop the violence.⁴³ Like the violence itself, the solution had to

⁴⁰ This distinction continued even in the aftermath of the conflicts through the differential treatment of the ICTY and ICTR (discussed more below).

⁴¹ *Supra* note 18, 358.

⁴² Melvern, ‘Missing the Story’, 202.

⁴³ S/PV.3368, 3; and S/PV.3377, 6 and 8; and S/PV.3326, *Provisional Verbatim Record of the Three Thousand Three Hundred and Twenty-Sixth Meeting*, 06/01/1994, 7. What is further interesting here is that the French were also warning about the need to ensure that the intervention was as economical as possible. Two

come from within.⁴⁴ The APA was presented as the solution, as this would (re)introduce a ‘strong’ government to help stop the tribalism and chaos.⁴⁵ As a result, the violence remained *Rwanda’s* problem, outside of the realms of the international and the UN’s sphere of responsibility. What this also meant was that—almost inexplicably—the UNSC allowed the Rwandan government to retain their seat on the UNSC *throughout* the genocide and, further, continued to call for a state-based solution to the problem (failing to see that this was *not* a problem of a failed state). As something that was not its responsibility, nor a state of affairs where any action would help, the UNSC’s obligations switched towards protecting itself, as Barnett suggests.⁴⁶ This was most clearly seen with the decision to scale down the UNAMIR forces in April as the genocide entered full swing.

This particular framing of the violence was also underpinned by a separation of the global order into the two separate spheres: the international (with the UNSC at its head), as the site of order and peace; and the local—as the site of barbarity, almost positioned as ‘outside’ of humanity in the state of exception where bare life could be taken without consequence.⁴⁷ This worked to conceal the deeply implicated involvement of international actors *within* the violence in Rwanda, whether this was the effect that the downsizing of the UNAMIR force had on convincing the genocidaires they could act with impunity, or France’s persistent

interpretations can be read into this. The first is that there was a genuine concern with the economics of the mission—an issue that becomes more important in Chapter Six. The second is that the French were utilising this discourse in order to create the conditions whereby intervention was limited in order to assist their friends within the Rwandan state. Either way, the centrality of the economics of the processes of intervention is key. A/C.5/48/SR.57, *Fifth Committee: Summary Record of the 57th Meeting: Financing of the United Nations Observer Mission Rwanda*, 29/03/1994, 2–3.

⁴⁴ ‘[UNAMIR] have performed a very commendable task in holding this situation together in order to buy time for the many internal manifestations to work themselves out.’ S/PV.3368, 3. See also S/PV.3377, 6 and 8.

⁴⁵ S/PV.3326, 5, 11, and 13–14; and S/PV.4049, *4049th Meeting*, 30/09/1999, 7; and S/PV.3371, *3371st Meeting*, 30/04/1994, 3.

⁴⁶ *Supra* note 3, 175.

⁴⁷ A/48/PV.93, 2 and 4; S/PV.3368, 3 and 4; S/PV.3377, 3–4 and 7; E/1994/SR.8, 7; and S/PV.4049, 2. See also, E/CN.4/1997/L.81, *Question of the Violation of Human Rights and Fundamental Freedoms in Any Part of the World, With Particular Reference to Colonial and Other Dependent Countries and Territories*, 15/04/1997. See also Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life* (Stanford: Stanford University Press, 1998).

support for the genocidaires. It meant that France could legitimately discuss ‘what could be done’ about Rwanda, whilst supporting the Rwandan government militarily and allowing weapons to be sold freely.⁴⁸ This also meant that the murder of the Belgium troops became the symbol of the West’s sacrifice in a conflict they had no hand in making, rather than a targeted and symbolic attack at the former colonial rulers of Rwanda.⁴⁹ Throughout, the international community was presented as innocent and sat outside the violence, rather than tied up with the violence itself.

Whilst I am not suggesting that these discourses on their own resulted in the course of (in)action taken in Rwanda, the widespread acceptance of the underlying imaginings of Africa, and the local and the international, permitted certain (non)actions to be accepted as legitimate.⁵⁰ This position is also compatible with the ideas of state interest discussed above. For either the discursive imaginings described here were created in order to shield some states from criticism for pursuing their interests with concern for little else (meaning that these discourses were seen to have a purchase with the communities that these actors were speaking to), or they contributed towards a ‘genuine’ understanding that the violence in Rwanda was simply not of concern to the UN, or perhaps more exactly the UNSC. The strength of the first explanation can be seen in the Rwandan government’s description of violence at the UNSC as being the result of spontaneous outpouring of emotions, as it no doubt hoped the ‘international community’ would continue its non-interventionist policy.⁵¹ However, several factors demonstrate that the latter view played at least some part. First, this Othering discourse spread far beyond interested member states, but was also repeated within

⁴⁸ S/PV.3326, 10–1.

⁴⁹ S/1999/1257, 32; A/48/PV.93, 2 and 4; and S/PV.3368, 2.

⁵⁰ See also Richard Kaplan, *The Coming Anarchy: Shattering the Dreams of the Cold War* (New York: Random House, 2000).

⁵¹ See, S/PV.3377, 2–4.

the media in countries like the UK and US (which at the very least helped remove pressure from the UNSC and P5 countries to do more). Second, it appears that in some quarters this understanding of the violence being tribal or natural, which meant little could be done, did seem to shape policy. As Pru Bushnell (US Deputy Assistant in the Department of African Affairs), said: '[P]eople didn't know that it was a genocide. What I was told was "Look Pru, these people do this from time to time."'”⁵² This underlies the notion that one of the reasons that more was not done was because this did not look like the 'Holocaust', a 'western' crime. It is also telling, as explored below, that it was only when this was reframed *legally* as being genocide that the UNSC decided try to do more to stop the violence.

Moving towards 'Intervention'

The UNSC'S first implicit allusion to 'genocide' came on 30 April 1994 when a UNSC statement drew on the wording of the United Nations Genocide Convention (*hereafter* Genocide Convention), noting: '[I]n this context the killing of members of an ethnic group with the intention of destroying such a group in whole or in part constitutes a crime which is punishable under international law'.⁵³ This was, however, the result of a compromise as New Zealand had initially pressed for the UNSC to explicitly use the term 'genocide', but the P5, led by the UK and US, vetoed this insertion; both worried about what the literal use of the g-word might mean for their responsibility to 'do more'.⁵⁴

⁵² *Supra* note 18, 351.

⁵³ S/PV.3377, 14.

⁵⁴ S/PV.7155, 5; and S/1999/1257, 38.

The first *explicit* use of the term genocide was on 16 May 1994, as the New Zealand delegate Keating stated, after condemning the farce that had allowed Rwanda to continue to hold a seat on the UNSC, that there needed to be an enquiry into the genocide, with the Czech delegate stating that '[i]n the view of my delegation, the proper description is genocide'.⁵⁵ Whilst during this meeting only New Zealand and the Czech Republic used the term, the wording of the Genocide Convention was again mobilised in order to condemn the violence and to threaten possible sanctions for guilty parties, marking a step-change in how the violence was perceived. This was also the meeting that finally agreed, through UN Resolution 918, to increase the size and role of the UNAMIR forces, ultimately creating UNAMIR 2, as the UNSC, and the UN more generally, appeared to begin to see a greater role for themselves in bringing the violence to an end.⁵⁶ Indeed, as Djibouti's representative argued during the meeting on 16 May, 'if there is a positive development in the relentless Rwandan tragedy, it is the apparently universal recognition that in some significant way the international community must now become directly involved.'⁵⁷ On 31 May 1994 the Secretary General finally declared that 'there can be little doubt that [the killing] constituted genocide'.⁵⁸ Here, the Secretary General made it clear that the level of violence in the presence of the UN had reached the point where failure to bring the violence to an end would irrevocably damage the UN's reputation.⁵⁹

The introduction of the legal term 'genocide' accompanied a reframing of how the violence in Rwanda was understood and brought with it a different understanding of the international communities, and specifically the UNSC's, responsibility and possibility to act, to 'do more'.

⁵⁵ S/PV.3377, 11 and 16.

⁵⁶ *Ibid*; S/1999/1257, 26; and S/1994/640, *Report of the Secretary-General on the Situation in Rwanda*, 31/05/1994, 11.

⁵⁷ S/PV.3377, 8. See also p. 11.

⁵⁸ S/1999/1257, 26.

⁵⁹ *Ibid.*, 27.

The turn to the legal idiom coincided with the simultaneous admonition that more had to be done and also brought with it the threat of possible future action through prosecutions of those responsible.⁶⁰ Also crucially, this sense of responsibility, and the possibility of intervention, came as the violence that had previously only occurred in relation to the local (where it was considered chaotic and without sense) was brought into closer contact with the international, as it now represented a violation of one of the international community's legal norms, which rendered the whole community a *victim* of the violence as it became a crime *against humanity*.⁶¹ This was, moreover, also seen in the Secretary General's warnings that recognised the *harm* that the UN's inaction had caused to the reputation of that community now that the violence had been identified as genocide. The adoption of the term genocide coincided with the UNSC no longer being able to avoid direct involvement.⁶²

There was, however, never a complete shift in how the violence, and the possible response to that violence, was seen. Even after the UNSG's report of 31 May 1994, UNSC members were reluctant to refer to the violence as genocide, as they now dragged their feet over the logistics involved in creating the enlarged UNAMIR 2 force.⁶³ Many states continued to describe the violence with the same Othering terms mentioned previously, as something that was simply part of the conflict (regrettable, but not something that had to be stopped).⁶⁴ Only the Czech

⁶⁰ S/PV.3371, 3; S/PV.3377, 14–5. There is also an interesting suggestion here that the turn to legal language to highlight the problem, and to law as the solution, was used as a way of 'acting' without 'acting'. 'Make no mistake; this is the crux of the matter. The killings must be stopped now. If this is so, then it is abundantly clear that we are simply deceiving ourselves in emphasizing the human rights aspect of this tragedy, however stunning it is to us. No one will deny that highlighting the criminal, genocidal and human rights violation aspects of the situation is necessary, but as an approach to the ongoing situation in Rwanda it leads us to focus on a cure after the fact, rather than dealing with the real cause and necessary prevention of the disease.' (Djibouti, S/PV.3388, 3388th Meeting, 08/06/1994, 2).

⁶¹ S/RES/955, *Resolution 955*, 08/11/1994; S/1995/134, *Report of the Secretary-General Pursuant to Paragraph 5 of Security Council Resolution 955 (1994)*, 13/02/1995, 4; and S/1999/1257, 38.

⁶² S/PV.3377, 8 and 11. This also resulted in the infamous statement by Madeleine Albright (US ambassador at the UN) about 'acts of genocide'.

⁶³ S/1999/1257, 26.

⁶⁴ S/PV.3377, 7 and 9; E/1994/SR.8, 7; and *Ibid.* 26.

Republic and New Zealand delegates, again, were willing to explicitly and repeatedly call this genocide and nothing else. In June, as the genocide continued, in a seemingly desperate appeal for more to be done, the Czech delegate drew on the Holocaust to describe the killing, noting:

The regime in Rwanda has been attempting to do something similar [to the Nazi's]—with Machetes instead of gas chambers; with the notorious Interahamwe, comparable to the SS, with the Mouvement Républicain National pour la Démocratie et le Développement [MRND] and Coalition pour la Défense de la République [CDR], comparable to the Nazi Party.⁶⁵

However, this was an exception, and there seemed to remain a belief, supported by a continuation of the Othering discourse, that the violence was a problem for someone else to deal with. Even when the responsibility for stopping the violence spread beyond Rwanda, it was presented as a specifically ‘African problem’,⁶⁶ for Africa to deal with.⁶⁷ As such, it was expected that the African nations would supply the vast majority of troops required for UNAMIR 2.⁶⁸ The UN member states’ (notably the US) refusal to support these nations’ participation in UNAMIR 2 resulted in the continued delay of the UNAMIR 2 forces, which did not arrive until October 1994.

As this suggests, Rwanda remained a ‘local’ problem, of no great interest to the West and the UNSC, reproducing the divide between the international and the local. The strength of this discourse was most clearly illustrated by the UN’s reasoning that accepted the legitimacy of a French ‘multi-lateral’ force—comprising a tiny contingent of Francophone Senegalese personnel—to intervene with *Operation Turquoise* until the UNAMIR 2 force was ready. Here, the French—representing the international—were seen as neutral outsiders who could

⁶⁵ S/PV.3388, 3–4.

⁶⁶ S/1999/1257, 25.

⁶⁷ S/PV.3377, 6 and 8.

⁶⁸ S/1999/1257, 123.

intervene without political interest; its neutrality was seemingly further ensured due to the ‘humanitarian’ principles that underpinned the operation.⁶⁹ This provided a particularly clear example of the international being ‘outside’ of the violence, where they were positioned to be able to ‘step in’ to ‘bring peace’ and restore order.⁷⁰ Indeed, this discourse was so strong that it seemed that little consideration was given to the appropriateness of France heading up the intervention, despite its colonial history and close support for the *genocidaires*, something that was only questioned by China, Brazil, and Russia.⁷¹

The Rwandan genocide largely came to an end with the RPF’s victory on 17 June 1994.⁷² Whilst, the above has argued that the reframing of the crisis as ‘genocide’ coincided with a change in the UN’s response to the violence (even if a number of problematic imaginings persisted) it was once the genocide had come to an end that the UN intervened with greater commitment. At this point it deployed its different offices and organs, each with its own expertise—human rights, development, and governance—to contribute to the processes of ‘normalisation’, ‘reconstruction’, and ‘reconciliation’.⁷³ This normalising process was very much rooted in a particular imagining about how peace could be established both within

⁶⁹ S/PV.3377, 8 and 11; S/PV.3388, 6; S/PV.3402, 3402nd Meeting, 11/07/1994, 3; and S/PV.3392, 3392nd Meeting, 22/06/1994, 2.

⁷⁰ S/PV.3402, 2–3; S/PV.3400, 3400th Meeting, 01/07/1994, 3–7; S/PV.3371, 3. Even the UNAMIR, here, were considered a success as the mere presence of their ‘good offices’ assisted in civilising the country. S/1995/457, *Report of the Secretary-General on the United Nations Assistance Mission for Rwanda*, 04/06/1995; and S/PV.3640, 3640th Meeting, 08/03/1996, 15.

⁷¹ S/PV.3392, 3–5 and 9–10.

⁷² It is important to recognise that, whilst this is the predominant narrative about the violence—also propagated by the narrative constructed at the ICTR—the violence and the genocide very much continued after the RPF victory.

⁷³ S/PV.3436, 3436th Meeting, 14/10/1994, 2–3. This notion of fragmented bureaucratic expertise is beyond the scope of this dissertation—nor am I passing comment on the ‘effectiveness’ of this—but rather considering for now how these interventions are imagined. The extent, however, to which this ‘professionalisation’ and perhaps ‘compartmentalisation’ of these issues can take hold, I think, can be clearly seen with the creation of a special office tasked with the prevention of genocide, which was explicitly *prevented* from commenting on whether some form of violence constituted genocide, but only ever allowed to try to prevent it. A/HRC/10/30, *Annual report of the United Nations High Commissioner for Human Rights and Reports of the Office of the High Commissioner and the Secretary-General: Efforts of the United Nations System to Prevent Genocide and the Activities of the Special Adviser to the Secretary-General on the Prevention of Genocide*, 18/02/2009, 5 and 14.

Rwanda and within the international system as a whole. As it had during the genocide, this imagining constructed Rwanda as a ‘malfunctioning’ state rather than a product of the international system.⁷⁴ This brought with it not only domestic instability but—due to the interconnected nature of the global order—wide spread regional and international instability, as was being witnessed in Rwanda’s neighbouring countries due to the refugee crisis and the continuing violence (and genocide) that this brought with it.⁷⁵ The understanding, however, meant that the solution to the problem was to (re)build the failed state in a particular image (rather than consider that the fault might lie with the system as a whole); thus, the international community, led by the UN, set about embarking on a distinctly neo-liberal state-building exercise based on: ‘good governance’; introducing democracy; repairing the country’s military and security forces; and creating a strong economy that was supported, and made possible, by a healthy and literate population (required to compete in the ‘global market’).⁷⁶

⁷⁴ See, A/48/935, *Development and International Economic Cooperation: An Agenda for Development: Report of the Secretary-General*, 06/05/1994; and S/PV.6790, 6790th Meeting, 25/06/2012.

7. This is not universally true. Jordan and Cuba, for instance, often mounted attacks about the legitimacy of the whole system and particularly the hypocrisy of many of the states’ claims to want to assist when participating is violations of international law themselves. E/1994/SR.8, 6–7; S/PV.7160, 7160th Meeting, 25/04/2014, 17; and S/PV.7155, 8–9.

⁷⁵ This also rendered the problem as the UNSC’s responsibility, as this now represented a threat to international peace and security. A/48/935; A/52/871, *The Causes of Conflict and the Promotion of Durable Peace and Sustainable Development in Africa: Report of the Secretary-General*, 13/04/1998, 16; S/PV.3436, 2; S/1994/1115, *Letter Dated 28 September 1994 from the Permanent Representative of Rwanda to the United Nations Addressed to the President of the Security Council: Statement Dated 28 September 1994 on the Question of Refugees and Security in Rwanda*, 29/09/1994, 3–4; and S/PV.3566, 3566th Meeting, 16/08/1995, 10.

⁷⁶ A/48/935, 5–25; S/1995/457, 5 and 15; E/CN.4/1997/61, *Question of the Violation of Human Rights and Fundamental Freedoms in any Part of the World, with Particular Reference to Colonial and Other Dependent Countries and Territories Report on the Situation of Human Rights in Rwanda Submitted by Mr. René Degni-Ségui, Special Rapporteur of the Commission on Human Rights, Under Paragraph 20 of Resolution S-3/1 of 25 May 1994*, 20/01/1997, 15; S/PV.3358, 3358th Meeting, 05/04/1994, 4; S/PV.3436, 1–3; S/PV.3566, 8–14. See discussions on peace-building here: A/49/PV.21, 49th Session, 21st Meeting, 06/10/1994. Maintaining a military force was, moreover, deemed a defining aspect of sovereignty. As was argued when Rwanda request that the UN lift the arms embargo in place against it: ‘My Government entirely understands that from a legal standpoint the Kigali authorities wish to *regain full sovereignty*. It is normal for a Government to request *full exercise of its competence* to ensure the security of its inhabitants, and for it to possess the means to do so. By suspending the embargo against Rwanda until 1 September 1996 the security council has just complied with this request’ (emphasis added). S/PV.3566, 10.

As a result of various factors discussed in the following section, international criminal justice was seen as being able to contribute towards the process of rebuilding Rwanda and on 8 November 1994, the UNSC, under Resolution 955, brought the ICTR into existence.⁷⁷ Like the ICTY, to which it was partially joined (they shared a prosecutor and the appeal chambers), the Tribunal (a quasi-independent institution that would answer to the UNSC) consisted of three organs—chambers, registry, and prosecution—and was charged with prosecuting individuals responsible for violations of international criminal law—including crimes against humanity, violations of common articles 2 to the Geneva Convention (war crimes), and genocide—within Rwanda or neighbouring states between 1 January 1994 and 31 December 1994. As a Chapter 7 mission, the Tribunal was a response to what was seen as a continuing threat to international peace and security, and it became an important tool in the ‘process of national reconciliation and [...] restoration and maintenance of peace’.⁷⁸ But how, exactly, was it supposed to achieve this? Why was international criminal justice seen as a useful tool in response to the violence? The final section of this chapter will explore the Tribunal’s strategic function during its formative years as it was establishing itself as an institution of international criminal law, to begin to determine, at the outset at least, who the Tribunal was created to serve and what it was supposed to achieve.

International Criminal Justice and the ICTR’s Strategic Function

⁷⁷ S/1994/1115, 3.

⁷⁸ S/RES/955, 1. The ICTR’s statute can be found at: <http://unictr.unmict.org/en/documents/statute-and-creation> (last accessed 24/05/2017).

Perhaps most obviously, the Tribunal was created to help Rwanda reconcile and overcome the consequences of the genocide.⁷⁹ It is often forgotten that Rwanda, headed by the new RPF government, *requested* that the UNSC create an international tribunal. Acknowledging that the Rwandan legal system was all but destroyed, the RPF government called on the UN to bring *justice* where it couldn't, citing the ICTY as a precedent. The UN's creation of the ICTY meant that after this request had been made it would have been very hard not to agree to a similar tribunal for Rwanda (it is more than doubtful that the UN would have acquiesced to this demand had the ICTY not already been created). This is perhaps the most important element that can help to explain why the Tribunal came into existence.

Beneath this almost instinctive call for 'justice' lay a number of other ideas that appeared to make international criminal justice the right tool to help Rwanda recover from the genocide. First, it was thought that an international court could help address the refugee crisis, which the UNSC saw as a serious threat to international peace and security, as this infringed upon the sovereignty of the neighbouring countries, risked destabilising the whole region, and marked a new phase in the genocide as the killing continued in the camps under the command of the 'government in exile'.⁸⁰

Several factors supported the apparent usefulness of a tribunal here. First, it would help remove the leaders of the genocide from the picture. These persons were seen as being

⁷⁹ 'US Lawyer Champions Victims', *New York Times*, 01/11/1998, 13.

⁸⁰ The refugee camps became a microcosm of Rwanda, as ministers discharged their duties as members of government, and the camps rearranged themselves to represent the administrative structure of Rwanda. Prefectures and communes were reformed with their former préfets and bourgmestres put in charge; in some cases, even sectors and cells were reformed. As during the genocide, these administrative units and organisations were put to use to continue the genocide within the camps and also to prevent Rwandans from returning to Rwanda. S/1994/1157/Add.1, *Situation of Human Rights in Rwanda: Third Report on the Situation of Human Rights in Rwanda Submitted by Mr. René Degni-Ségui, Special Rapporteur of the Commission on Human Rights, Under Paragraph 20 of Resolution S-3/1 of 25 May 1994*, 14/11/1994, 15-8.

responsible for the continuing instability in the refugee camps, and the region more generally, as they formed a ‘government in exile’ and continued to rule and to commit acts of genocide within the camps.⁸¹ It was also hoped that the administration of impartial justice and holding individuals to account would convince Hutus in the camps (the majority of the refugees) that they could return to Rwanda in the knowledge that they would be treated fairly without fear of collective punishment or reprisals.⁸² This ultimately resulted in the UNSC enlarging the Tribunal’s geographic jurisdiction from covering only crimes occurring in Rwanda to crimes committed in neighbouring countries so as to specifically capture the refugee crisis and the violence that came with it.⁸³ This showed the first signs of law’s ability to mould itself around acts of violence, as it responded to the political needs of those that mobilised it.

It was believed that this form of justice would also have extensive additional benefits for Rwanda more generally, and could help it reconcile. As Madeline Albright, argued:

Our goal must be individual accountability and responsibility [...]. We must fix responsibility on those who have directed these acts of violence. In so doing, we can transform revenge into justice, affirm the rule of law, and hopefully bring this horrible cycle of violence to a merciful close.⁸⁴

Justice, then, would help the victims overcome the desire for revenge and also help avoid ideas of collective guilt and responsibility, which would have seen the whole of the Hutu

⁸¹ ‘War Crimes: Don’t Let Them Get Away with It’, *Washington Post*, 20/12/1994.

⁸² Payam Akhavan, ‘Justice and Reconciliation in the Great Lakes Region of Africa: The Contribution of the International Criminal Tribunal for Rwanda’, *Duke Journal of Comparative and International Law* 7 (1996), 337–8; S/PV.3453, 3453rd Meeting, 08/11/1994, 10; ‘Rwanda Agrees to a U.N. War Crimes Tribunal’, *New York Times*, 09/08/1994; and ‘War Crimes First’, *Washington Post*, 23/08/1994.

⁸³ S/1994/640, 11–12; E/CN.4/1995/7, *Question of the Violation of Human Rights and Fundamental Freedoms in any Part of the World, with Particular Reference to Colonial and Other Dependent Countries and Territories: Report on the Situation of Human Rights in Rwanda Submitted by Mr. R. Degni-Ségui, Special Rapporteur of the Commission on Human Rights, Under Paragraph 20 of Commission Resolution E/CN.4/S-3/1 of 25 May 1994*, 28/06/1994, 11–19; S/1994/1125, *Preliminary Report of the independent Commission of Experts Established in Accordance with Security Council Resolution 935 (1994)*, 04/10/1994, 1–2; and S/1994/1405, *Letter Dated 9 December 1994 From the Secretary-General Addressed to the President of the Security Council: Final Report of the Commission of Experts Established Pursuant to Security Council Resolution 935 (1994)*, 09/12/1994.

⁸⁴ S/PV.3400, 4.

population charged and prosecuted for the violence. Drawing strongly on the logic that also underpinned *Nuremberg*, justice here would help to identify those that were guilty so that the innocent could reintegrate into society.

Throughout its formative years, it was also held that the Tribunal could help Rwanda, and in particular the victims of the genocide, by offering them the ‘truth’ about what had happened.⁸⁵ This was particularly advocated for by the first prosecutor of the Tribunal, Richard Goldstone, who saw the Tribunal as a space where the victims could speak of their traumatic experiences and directly hold those that were responsible for the crimes to account. In doing so, a light could be shone on the past, and an irrefutable account of the genocide could be produced to act as a bulwark against those that would continue to deny what had happened.⁸⁶ As Payam Akhavan—involved with the creation of the ICTY—noted:

A fundamental condition for reconciliation is widespread recognition of the truth that what transpired in 1994 was a genocide in which the Rwandan population was decimated and that there was nothing inherent or inevitable about the whirlwind of hatred and violence which swept through the country; and a recognition that Hutu and Tutsi walked the road to hell, victim and perpetrator alike, at the instigation of extremist leaders whose interests it served, and that the people of Rwanda are not doomed to repeat the mistakes of the past. Thus, through the International Tribunal, as well as national trials, the Rwandan people may be witness to the truth and thereby exorcise themselves from the spectres of the past.⁸⁷

This would help both the victims and society to move forwards, having built this truth into a new collective memory.⁸⁸ As this suggests, this was seen as building on the legacy of the

⁸⁵ ‘Judgement Day’, *Washington Post*, 11/10/1998; Gaynor, ‘Uneasy Partners’ (see Intro., n. 31), 1259–63.

⁸⁶ Goldstone, ‘Justice as a Tool for Peace-Making’ (see Intro., no. 4), 485–504; Akhavan, ‘Justice and Reconciliation’, 340–1; and Alvarez, ‘Akayesu’ (see Intro., n. 12), 363.

⁸⁷ Akhavan, ‘Justice and Reconciliation’, 341. Madeline Albright similarly noted that the Tribunal ‘will establish the historical record before the guilty can reinvent the truth’. ‘Judgement Day’, *Washington Post*, 11/10/1998.

⁸⁸ Akhavan, ‘Justice and Reconciliation’, 340–1. One of the UN reports to suggest that the creation of an *ad hoc* international tribunal was required noted that international criminal justice was considered as a *specific* mode of response to the genocide, with a distinctive purpose, distinguishing between what an international criminal justice or human rights investigation would produce. The former would identify who was principally responsible

Holocaust trials, and particularly *Eichmann*, which were used as precedents to justify these notions.⁸⁹

This concern for the accuracy of the Tribunal's account of the genocide also led the UNSC to partially acquiesce to the Rwandan government's demands that it expand the Tribunal's temporal jurisdiction to include crimes committed *prior* to the 6 April 1994, the original start date for the Tribunal's jurisdiction, so that it could capture the planning of the genocide. As a result of this intervention, the start date of the Tribunal's jurisdiction ended up being 1 December 1994—whilst not extending as far back as the Rwandan government would have wished this nonetheless again shows how law bent to political concerns.⁹⁰ Similarly, the Tribunal also extended the end date of the jurisdiction from 17 July 1994 (the date of the RPF's victory) to 31 December 1994 so as to capture on-going violence in both Rwanda and the neighbouring region after the genocide had 'stopped'.⁹¹

As was suggested above, in many ways law also became the 'natural' response to the problem. Law's hold on how the violence was understood and, as a result of this which interventions were imagined as a possibility, was already visible within the veiled references to the occurrence of international crimes and the threat of prosecutions made by the UNSC on 30 April and 16 May 1994.⁹² The idea of a legal response to the violence was reinforced by the Human Rights Special Rapporteur report on the violence in Rwanda, commissioned by

for the killing (considered a 'vertical investigation'), whilst the latter (considered a horizontal investigation) would consider how and why the genocide occurred. E/CN.4/1995/7, 3.

⁸⁹ Alvarez, 'Akayesu', 364.

⁹⁰ Moghalu, *Rwanda's Genocide* (see Intro., n. 75), 32–3; George Yacoubian, 'The Efficacy of International Criminal Justice: Evaluating the Aftermath of the Rwandan Genocide', *World Affairs* 161:4 (1999), 188; and S/PV.3453, 14. The RPF were presumably less enamoured with the extension of the jurisdiction to 31 December 1994 as this meant that this would also cover some of their crimes committed after taking power.

⁹¹ *Ibid.*

⁹² E/CN.4/1995/7, 11–19; and S/PV.3371, 2.

the Economic and Social Council (ESC) on 28 June 1994.⁹³ The report, the first in-depth UN report into the violence, left no doubt that the violence in Rwanda constituted genocide and, as a result, called for those responsible for these crimes to be brought to account.⁹⁴ The escalation of this judicialising of the problem continued with the UNSC's creation of a Commission of Experts on 1 July 1994, which, on 4 October 1994, confirmed the Special Rapporteur's findings that genocide had occurred and called for the creation of an ad hoc international tribunal.⁹⁵ Seeing the violence in Rwanda as a violation of international legal norms, then, started off a chain reaction whereby an international court was increasingly seen as a legitimate and necessary response.⁹⁶ The creation of the ICTR's statute, and the affirmation of the legitimacy of holding individuals to account for acts of genocide, crimes against humanity, and war crimes marked the culmination of this process. This, and the following trials, brought to life what were, at this point, a relatively poorly defined set of conventions, treaties, rules of evidence and procedure and customary law, and contributed towards the institutionalisation, and solidification, of international criminal justice as a distinct field of practice.⁹⁷ In many respects the Tribunal, as a site of law, had become (almost tautologically) *for* the law, and with this, for the legal agents that would later come to populate it.

The Tribunal would also, it was hoped, make important contributions to the international community—beyond bringing peace to the Great Lakes region. This was to be achieved, as with the work of the ICTY, by solidifying the principles of law that governed certain

⁹³ E/CN.4/1995/7.

⁹⁴ S/PV.3377, 14–5.

⁹⁵ S/PV.3400; S/1999/1257, 28; S/1994/1125, 5; S/1994/1115, 3–4; and S/PV.3566, 8–14.

⁹⁶ S/PV.3640, 8–19; A/51/PV.78, *51st Session, 78th Plenary Meeting*, 10/12/1996, 5 and 10–6; and S/PV.3453, 8, 12–13 and 15–7.

⁹⁷ For a similar argument see Frederic Mégret, 'International Criminal Justice as a Juridical Field' (see Intro., n. 88). The dynamic and performative nature of law was also clear here, as the statute's jurisdiction covered war crimes committed in non-international conflict, which at this point in time was not considered as customary law.

practices within the international community, by establishing that international criminal justice was a possibility, and also by demonstrating the conscience of the international community.⁹⁸ Symbolically, the Tribunal functioned to reinstate the international community's humanity that was lost during the genocide.⁹⁹ As the Malaysian delegate to the UNSC stated in December 1996: '[T]he Tribunal serves as the conscience of the international community. It is the manifestation of the moral outrage of humanity over the transgressions of civilizational norms and ethics.'¹⁰⁰

More cynically, the Tribunal offered a way of making this type of statement (showing that, despite their (in)actions during the genocide, the international community really did care) but in a relatively cost effective and risk free manner.¹⁰¹ From the very outset an 'economic' element was inserted into the court's mandate, which would see it under-resourced for its duration, but particularly during its formative years. In its first budget, for instance, the Tribunal had a relatively meagre initial request (considering what was being attempted) of \$0.5million cut by 20 percent and then the budget proposal for 1995 was refused because the UN's Fifth Committee (in charge of finance) argued it had not been justified.¹⁰² The allocation of resources would also, once again, show the prioritisation of the former Yugoslavia over Rwanda, as funds were unevenly distributed between the two institutions, giving the impression once more that black bodies mean less than white ones.¹⁰³

⁹⁸ S/PV.3453, 7–8.

⁹⁹ 'Judgement Day', *Washington Post*.

¹⁰⁰ A/51/PV.78, 18.

¹⁰¹ Mégret, 'Politics of International Criminal Justice' (see Intro., n. 77), 173–4.

¹⁰² 'Second Class Justice', *Guardian*, 15.

¹⁰³ A/51/789, *Financing of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States Between 1 January and 31 December 1994: Report of the Secretary-General on the Activities of the office of internal Oversight Services*, 06/02/1997, 10; and A/C.5/52/SR.68, *Fifth Committee: Summary Record of the First Part of the 68th Meeting*, 08/07/1998, 12. It also seems like frequently the ICTY

For each of these contributions to be realised it was understood that an international court would be needed in addition to domestic trials in Rwanda. From a practical perspective, in addition to overcoming (or sidestepping) Rwanda's lack of infrastructure, an international court, with an international jurisdiction and backed by the UN (and most importantly the UNSC), seemed to offer the best chance of capturing and prosecuting those most responsible for the violence, the vast majority of whom were not in Rwanda.¹⁰⁴ International trials would also ensure that impartial and neutral justice would be delivered. The RPF also acknowledged that this would be the benefit of an international court, which would help ease concerns that Rwanda's domestic courts would become sites of revenge and 'victors' justice.¹⁰⁵ Whilst plans had initially been made for the Tribunal to be seated in The Hague, along with the ICTY, it was ultimately thought that an African seat was better suited to the Tribunal's goals of assisting Rwanda, as this both retained the ability of the court to be independent from Rwanda, but also meant that it could be close enough to the location of the crime to be important symbolically—justice must be *seen* to be done—and practically, as it would help with accessing the crime sites and witnesses. As a result, Arusha, Tanzania, was selected as the place where the Tribunal would sit.¹⁰⁶

However, with this decision the divide between the international and the local re-emerged, as the local once again became the site of the savage and the international that of the saviour.¹⁰⁷

was given greater attention at UN meetings than the ICTR. See: S/PV.4229, *4229th Meeting*, 21/11/2000; A/57/PV.36, *57th Session: 36th Plenary Meeting*, 28/10/2002, 15; and S/2003/946, *Letter dated 3 October 2003 from the Secretary-General Addressed to the President of the Security Council: Completion Strategy of the International Criminal Tribunal for Rwanda*, 06/10/2003, 2 and 4.

¹⁰⁴ Senior Appeals Attorney – ICTR Office of the Prosecutor (Arusha, Tanzania: June, (2015).

¹⁰⁵ Moghalu, *Rwanda's Genocide*, 29.

¹⁰⁶ *Ibid.*, 35–8; Peskin, *International Justice* (see Intro., n. 75), 166–7.

¹⁰⁷ Mutua, 'Savages, Victims, and Saviours' (see Intro., n. 74), 201–45. See also Otto, 'Subalternity' (see Intro., n. 74), 337–64.

One of the reasons why this argument for an international court made sense was that it reaffirmed the impartiality of the international and their lack of involvement with the violence in the first place allowed for the international to ‘step in’ and ‘bring peace’ through the administration of justice.¹⁰⁸ The creation of the Tribunal also demonstrated the possible tensions between the international and the local as, despite having initially requested the Tribunal, Rwanda ultimately voted against its creation.¹⁰⁹ Underpinning this dispute was the sense that there were two competing conceptions of justice at play. Whilst the Rwandan delegate at the meeting that created the ICTR agreed that the UN could deliver neutral and impartial justice, they equally felt that this ‘distanced justice’ would not meet with Rwandan’s *expectations of justice*. Geographically the Tribunal was seen as too removed from Rwanda (which was precisely one of the UN’s rationales for the Tribunal); the narrow temporality of the crimes to be considered would fail to capture *their* historic suffering and *their* struggle; and the lack of a death sentence meant that justice delivered internationally would not be of equal strength compared with that delivered locally.¹¹⁰

The resolution of this tension in favour of the international clarified the superiority of the international over the local, which was further established as the ICTR was given primacy of jurisdiction.¹¹¹ This primacy meant that: states were obliged to transfer suspects when requested to do so; states had an obligation to amend laws that might otherwise prevent them from cooperating with the Tribunal; and—whilst the reciprocal was prohibited—a person who had been tried under domestic law could be tried again at the ICTR if the Tribunal found

¹⁰⁸ S/PV.3371, 3.

¹⁰⁹ S/PV.3453, 14–6.

¹¹⁰ *Ibid.*; and Peskin, *International Justice*, 162. Whilst I fully support the UN’s stand on its commitment to eradicate the death penalty from the world, the imposition of this seemed particularly hypocritical as three of the P5 retain the death penalty within their national jurisdictions.

¹¹¹ See Article 8 of the Statute. S/RES/955, 08/11/1994.

that the trial was in any way inadequate.¹¹² Such protection against the potential inadequacy of the ICTR was apparently not, it seems, required.¹¹³ As such, even at the outset there appeared to be a conflict between different understandings of who the Tribunal was supposed to serve and what it was supposed to achieve.

Conclusion

This chapter has made five key findings. First, it has highlighted the distinctive logics and ways of seeing that determined the UN's course of action throughout the genocide and as it created the ICTR. What is striking here are the elements that flow throughout each of these stages, and in particular the sense of the difference between the international and the local, as well as the continued impression after the genocide that Rwanda, as an African state (of continuing little interest), remained marginalised as the UNSC focused its attention on the ICTY.¹¹⁴ Second, this has also shown how the genocide became understood as a legal problem in need of a legal solution, which played a significant role in, first, escalating the UNSC's response to the genocide and, second, in seeing that an international court was required for peace to be achieved. Third, the Tribunal's 'strategic function' evolved to respond to the changing needs on the ground, in this instance expanding its geographical and temporal jurisdiction to capture crimes related to the refugee crisis, and to be able to more accurately account for the build-up to the genocide. The first signs of how this type of shift could affect the archive can be seen as this determined *what crimes* could be captured, and

¹¹² See Article 9 of the Statute. *Ibid.*

¹¹³ S/PV.3453, 5.

¹¹⁴ Two of my interviewees noted that within the legal community the ICTY was considered 'the place to be', with one also noting that it was thought that the ICTY was where the 'hip' and serious legal issues were dealt with. Appeals Judge – *ad hoc* International Tribunals (Copenhagen, Denmark: June. 2016); and Senior ICTR Appeals Attorney 3 – ICTR Office of the Prosecutor, (Arusha, Tanzania: June, 2016).

hence what could be archived—something explored further in the following chapter. Fourth, at the outset there were a myriad of different functions and stakeholders that became attached to the Tribunal. The Tribunal was to be a space of law, history, memory, politics, and reconciliation. It was to serve the interests of: political agents who created and oversaw it; legal agents who worked within it; the victims, Rwandan society and the Rwandan state whom it represented, spoke for, and allowed to speak; the defendants, and perpetrators more generally—both because these are inevitably the focus of a criminal trial, but also because of the idea that uncovering the guilty would also determine the innocent; and most broadly for the ‘international community’ or ‘humanity’. Fifth, underneath the idea that the Tribunal could act as a multipurpose space for all of these actors and goals lay a different picture of competing interests and priorities, which could come into conflict with each other, as the Rwandan government’s rejection of the court suggests.

As this also begins to show, whilst much rhetoric surrounded the Tribunal concerning, for instance, its role in reconciliation or its assistance to the victims, little thought was given to how, or if, these multiple goals could be pursued simultaneously.¹¹⁵ This leads to two subsequent tasks that will be pursued in the following chapters. The first will go beyond the rhetoric of the *promises* of justice to explore the *practice* of different actors at the Tribunal. In doing so I will ask: Who controlled and benefited from the trials as they were practiced at the Tribunal? How, and in whose interests, were the tensions between the different actors resolved? What does examining the practice of different actors reveal about what different goals were being pursued and their (in)compatibility? Second, as the above section has already suggested, how did the way the trials were approached influence how the archive was

¹¹⁵ See these minutes from an UNSC meeting, whereby these vague, ill-defined, notions about the ICTR’s possible impact are set out. S/PV.3640.

constructed? How did these competing interests impact this? What does looking at the way the archive was constructed reveal about what interests and discourses shaped it, and what does this do for our understanding of what the archive was for and, ultimately, the question of *whose archive*?

The following chapter will begin this process by considering how the prosecution approached the trials, what it prioritised and attempted to archive, and the effect that had on the way in which the archive was constructed.

Chapter Two: Prosecuting Genocide

Introduction

As I have shown, the Tribunal was initially set up as a forum that could serve the various interests of its different stakeholders and act as a site of law, history, and memory and as a venue where political interests were also pursued. However, after the UNSC assigned the mandate for the Tribunal under Resolution 955, it fell to the office of the prosecution (OTP) to develop a strategy to prosecute the genocide, deciding who to prosecute and what to prosecute them for, thereby determining how (or if) the various goals the Tribunal became associated with were to be achieved. So, what can be learnt about the archive and its purpose from the way the prosecution approached these trials?

This chapter explores the archive from the prosecution's perspective, considering what accounts of violence it produced and why it did so. It builds upon the ideas previously introduced about the nature of the histories produced by international courts, drawing particular attention to the law's influence on both shaping the broader parameters within which the prosecution's account had to fit, as Douglas and Bloxham identified, and also how it constructed understandings of the actors, such as perpetrators, that populated these accounts, as Drumbl and Kelsall suggested.¹ The first two sections of the chapter will consider each of these in turn. Whilst the idea that law shapes these accounts may appear a

¹ Bloxham, *Genocide on Trial* (see Intro., n. 12), 73 and 106; Kelsall, *Culture under Cross-examination* (see Intro., n. 21), 8–16; Drumbl, 'Pluralising' (see Intro., n. 21); and Douglas, *Memory of Judgement* (see Intro., n. 11), 4.

truism (it is, of course, a court of law), it is important nonetheless to set out clearly the logic of how this process worked and to disturb the obvious in order to understand who it was that controlled these processes and to what ends. This also offers a chance to critique the Tribunal's claims that it could serve different interests simultaneously. Moreover, as this chapter will also demonstrate, whilst the legal function of the courtroom played a significant part in determining the type of records the prosecution produced, this alone is insufficient to explain why the accounts of violence were created as they were. To this end, the second half of the chapter will explore the extent to which the OTP's strategy was *politicised* as a result of the influence of certain non-legal discourses, and the OTP's active pursuit of extra-judicial goals.

Law as Framework

Determining the Scope of Testimony

At the forefront of the prosecution's duties was securing convictions against those deemed responsible for the Rwanda genocide and other violations of international humanitarian law. The absence of a Nuremberg style paper trail produced by—and then used against—the perpetrators meant that, with few exceptions, the prosecution had to rely on witnesses in order to establish their cases against each accused. Any other non-oral evidence (which for the most part were submissions of the investigation documents: photos, diagrams, etc.), were very much *supplementary* evidence to this testimony.²

² The two partial exceptions to this that I have found were the 'Media trial' (which drew on transcripts of the radio broadcasts and copies of *Kangura* newspaper) and *Government 1* (which used government directives).

During each of the trials the prosecution encouraged the witnesses' testimony to unfold in particular ways in order to establish the legal requirements of their case for each of the crimes alleged in the indictment, so as to secure guilty verdicts. The rules of the court dictated that the testimony had to speak to one of the charges contained within the indictment, which in turn was limited in its potential scope by the Tribunal's statute (and hence restricted geographically, temporally, and in terms of subject-matter and personal jurisdiction). Forcing the testimony to remain within these boundaries helped to ensure that the defendant was afforded a fair trial, as this would allow the defence to know the prosecution's case before the trial commenced, which enabled them to properly contest the case put forward in court. Each provision of the statute played an influential role in determining what evidence the prosecution would employ during the trials. Most important here were the court's subject-matter jurisdiction (Articles 2–4 of the statute) and personal jurisdiction (Articles 5–6) which when combined provided almost a check sheet of the evidence necessary for the court to find the defendant guilty of each crime.³

The three crimes within the courts statute—genocide, crimes against humanity, and war crimes—produced three different overarching frameworks within which the prosecution would construct their accounts of the violence.⁴ Each crime came, in turn, with three distinct elements that had to be established: *mens reas*, *actus reus* and a contextual *in chapeau* element (which limited each crimes applicability to a particular context). Testimony had to

Prosecutor v. Édouard Karemera et al, Case No. ICTR–98–44, ICTR–98–44–4803/1, *Judgement and Sentence*, 02/02/2012, 181–92; *Prosecutor v. Ferdinand Nahimana et al.*, Case No. ICTR–99–52, ICTR–99–52–1323/1, *Judgement and Sentence*, 03/12/2003, 39–80.

³ S/RES/955, ICTR Statute, 08/11/1994. The ICTR's statute can be found at: <http://unictr.unmict.org/en/documents/statute-and-creation> (last accessed 24/05/2017).

⁴ Articles 2–4 ICTR Statute.

match these elements in order to meet the ‘relevance threshold’ that governed what was, and what was not, allowed to enter the courtroom. During *Cyangugu*, the prosecution argued:

Your Honours, the theoretical basis of admissibility adopted in common law jurisdictions requires that the Prosecution must prove [the] *actus reus* and [...] *mens rea*. It is this requirement of proof that carries the admissibility of evidence based on its relevance and the issues in question.

To this end, all relevant evidence is admissible, subject to a judge's discretion [...].⁵

For example, to establish that genocide had occurred the prosecution had to prove through the witnesses’ testimonies that one of the crimes recognised as genocide had been committed (such as causing ‘serious bodily or mental harm’) against a protected group within the Genocide Convention (religious, national, ethnic, or racial) in order to establish the *actus reus*; that it had been committed with intent, establishing the *mens rea*; and that it was committed with the intent to destroy that protected group ‘in whole or in part’, establishing the *dolus specialis* (special intent) which formed the *in chapeau* element here.⁶ For war crimes or crimes against humanity the prosecution had to similarly establish that a crime recognised as such by the statute (such as murder) had been committed intentionally against individual non-combatants within the context of a non-international armed conflict or a group on political, racial, religious, ethnic, or national grounds in an attack that targeted a civilian population.⁷

In addition to these conditions the prosecution had to establish that the accused was individually responsible for the crime, as specified under Article 6 of the court’s statute. There were two modes of liability that the prosecution could apply. The accused were either

⁵ *Prosecutor v. Andre Ntagerura et al*, Case No. ICTR-99-46 (hereafter ICTR-99-46), TRA000434/2, [Cyangugu] – Ntagerura et al – Redacted Transcript of 14/02/2001, 14/02/2001, 8.

⁶ Article 2 of ICTR Statute.

⁷ Article 3 and 4 of ICTR Statute.

directly responsible under Article 6(1) for the violence because they had planned, instigated, ordered, committed (later incorporating Joint Criminal Enterprise (JCE)), or otherwise aided and abetted a crime, or they were responsible under Article 6(3) as a superior for failing to prevent or punish their subordinates for committing crime (as limited by Articles 2–4).⁸

In each instance the prosecution would charge the accused under the relevant provisions of the statute for specific acts of violence that could be attributed to them, thereby creating a map through which their evidence would unfold during the trial. One example of this was the sexual violence charge against Akayesu for the crimes committed at the Taba bureau communal. The allegation here was that Akayesu had overseen, instigated, and aided and abetted the mass occurrence of sexual violence at the bureau communal as perpetrated by the Interahamwe. The following extracts from the prosecution’s examination-in-chief of Witness JJ highlights how this framed the witnesses’ testimony.

Prosecution: Witness JJ, when we left off you were explaining to us how you were taken by some Interahamwe and brought to the cultural center [*sic*] [...] At this time, how many of these men were escorting you to the cultural center?

Witness: There were many, there were very many at that that time. In fact we did not have the presence of mind to be able to count them.

Prosecution: At this time, you mentioned to us that Akayesu was in the yard, the courtyard, of the compound. Can you tell us exactly where he was at the time that you passed him?

Witness: He was standing there in front of the bureau communal of Taba.

[...]

Prosecution: I may have asked you this before, and forgive me for reasking if I did, but at the time you saw Akayesu, was he there alone or with someone?

Witness: He was with policemen and some Interahamwes who met him there.

[...]

⁸ See, Allison Danner and Jenny Martinez, ‘Guilty Associations: Joint Criminal Enterprise, Command Responsibility, and the Development of International Criminal Law’, *California Law Review* 93:1 (2005), 75–169.

Prosecution: When you were being taken to the [cultural centre], were you being taken was this voluntary, or were you being taken by force?

Witness: They dragged us by force.

[...]

Prosecution: When you entered into the cultural center, what did you see upon entering into the room?

Witness: When we entered the house, the Interahamwe pounced on us and started raping us.

[...]

Prosecution: Do you know whether or not at that time or after you were raped [Akayesu] ever came to the area of the cultural center?

Witness: I remember one time he came in front of the center and he addressed the Interahamwe and told them, "So, never ask me what a Tutsi woman is like."⁹

This string of questioning established the location of the crime, those that were responsible, the presence of Akayesu, the ethnicity of the victims and also that, as capture in the final exchange, the women were targeted *because* of their ethnicity. Combined with other witness testimony, which demonstrated Akayesu's authority over the communal police and the Interahamwe and, more generally, over the population, this established Akayesu's responsibility for the violence. Authority over the police and Interahamwe meant that under Article 6(3) he had a responsibility to prevent or punish the commission of a crime, and further that his presence whilst these crimes occurred (and without condemning their occurrence) gave active consent to, and 'encouraged', the commission of the crime.¹⁰ In total five witnesses would testify to the occurrence of sexual violence in the communal offices, and the law's influence in shaping the prosecution witnesses' testimony is apparent in each

⁹ ICTR-96-4, CONTRA001181, *Akayesu – Transcript of 23/1/1997*, 23/01/1997, 67-75. Here, I have selected the extracts from this testimony that best capture laws framing of the content of the testimony. However, one of the reasons why this section of testimony takes place over eight pages is because of how the procedural aspects of law, which for the most part is what occurred between these extracts, takes up a considerable amount of court time. As such, it becomes apparent that law also determine *how* an account can be given, which will be discussed more in Chapter Four.

¹⁰ For examples see, ICTR-96-4, CONTRA001175, *Akayesu – Transcript of 09/1/1997*, 09/01/1997; ICTR-96-4, CONTRA001187, *Akayesu – Transcript of 28/1/1997*, 28/01/1997, 102-3; ICTR-96-4, CONTRA001178, *Akayesu – Transcript of 14/1/1997*, 14/01/1997, 92; and ICTR-96-4, CONTRA001180, *Akayesu – Transcript of 22/1/1997*, 22/01/1997, 39.

case. Witness OO was asked to clarify the nature of the attack against her in order to make it clearer that this constituted—within the prosecutions understanding—rape; and Witness NN was asked a question that appeared directed at establishing that the action had resulted in ‘serious physical or mental harm’:

Witness: When he finished, he stood up and he made me stand up and we continued to walk.

[...]

Prosecution: Okay, I have to ask you a difficult question. When you say he put his sex into mine, does that mean that he penetrated your vagina with his penis?

Witness: Yes.¹¹

In another trial:

Prosecution: After this event finished how were you feeling, emotionally?

Witness NN: Normally when you shout it is because you are in pain.¹²

In each of these examples the influence of the law in structuring the prosecution’s account is apparent.¹³ The example of Witness JJ also demonstrates another common feature of the prosecution’s questioning, which was its focus on specifics of the incident. If someone saw a crime, it was important to know where they were standing; if they overheard an accused say something, the distance away from where they stood was important. This all contributed to strengthening the credibility of the witness.¹⁴

These provisions, along with Article 5 (which gave the Tribunal jurisdiction over ‘natural persons’ – as opposed to states or organisations) meant that the witness testimony was

¹¹ CONTRA001224, *Akayesu – Transcript of 27/10/1997*, 27/10/1997, 23-4.

¹² ICTR-96-4, CONTRA001227, *Akayesu – Transcript of 3/11/1997*, 03/11/1997, 24. See also Chapter Two, *Supra Note 8*, 74.

¹³ For a similar example where the prosecution construct a legal narrative concerning direct and public incitement to commit genocide see: CONTRA001178, 122-3

¹⁴ For examples see: CONTRA001180, 50; ICTR-96-4, CONTRA001186, *Akayesu – Transcript of 27/1/1997*, 27/01/1997, 96; and CONTRA001195, 16.

focused on the accused and their role in the violence. Reading the trial transcripts for the three cases discussed here gave the impression that the accused and their reach of influence acted almost as a spotlight that illuminated particular aspects of the violence. During *Akayesu* the occurrence of genocide within Taba's neighbouring communes was, for the most part, an irrelevance within the prosecution's account *except* when it was linked to Akayesu. Hence the spotlight shifted to Murambi commune on 19 April when Akayesu pursued Emphrem Karangwa (the Inspector of Police in Taba) and his brothers, who were subsequently murdered under Akayesu's orders.¹⁵ When the accused was not present directly, it was only those sites where the accused's responsibility and authority left a lingering presence that accounts of violence could be given. Hence, whilst most witnesses claimed that Bagambiki and Imanishimwe were not present during the massacre of refugees on the Gashirabwoba football field by soldiers, Imanishimwe's authority over soldiers within the region and Bagambiki's prior presence and promise to send soldiers (who arrived only to kill the refugees) meant that witnesses were permitted also to present their evidence concerning that episode of violence.¹⁶

Witness: During the attacks [at the football field] we saw a vehicle arrive and in that vehicle, was the director of the Shagasha Tea Factory, who was called Callixte Nsabimana [...] accompanied by Emmanuel Bagambiki. They arrived where we were and asked us to explain what our situation was.

We told them that we had problems, that for four days we had not eaten or drank anything. They promised that they were going to send soldiers to protect us in that area.

Prosecution: I'd like you to be more specific and tell Their Lordships who of the two addressed you or if both of them, that is Nsabimana and Bagambiki addressed you?

¹⁵ See testimonies from Witness S (ICTR-96-4, CONTRA001197, *Akayesu – Transcript of 5/2/1997, 05/02/1997*), Witness Q (ICTR-96-4, CONTRA001190, *Akayesu – Transcript of 4/2/1997, 04/02/1997, 1–81*) and Witness D (ICTR-96-4, CONTRA001198, *Akayesu – Transcript of 6/2/1997, 06/02/1997*).

¹⁶ ICTR-99-46, TRA000122/01, [*Cyangugu*] – *Ntagerura et al – Redacted Transcript of 09/10/2000, 09/10/2000*.

Witness: We were talking to Bagambiki.¹⁷

Where the seniority of the accused led to accusations of their involvement in the planning and execution of the genocide at a national level, or where the mobilisation of JCE as the mode of participation attached them to a large collective of perpetrators, then narratives of violence across whole regions and swaths of the country were possible, *but only because of the reach of the accused's authority*.¹⁸ Whilst these links showed the collaborative network of perpetrators responsible for the occurrence of violence, and in many instances seemingly pushed back against the notion of individual responsibility, these accounts remained legally relevant because of the accused's contribution and affiliation to a particular group. What was noticeable in *Gatete* in this respect was that despite charging Gatete as a member of a JCE, and also providing information about the other members of that JCE, the prosecution seemed reluctant (especially when compared to the defence's narrative) to allocate responsibility for the violence to other members of the JCE, instead focusing more explicitly on Gatete's role.¹⁹

The court's statute also limited the prosecution's narratives geographically and temporally. Geographically, whilst the court's jurisdiction appeared to give the prosecution the scope to examine the regional nature of the violence (and indeed, as will be recalled from Chapter One, it was implicitly tasked to do so) the prosecution interpreted its mandate more narrowly and did not charge any of the defendants for crimes that were committed outside of Rwanda.

¹⁷ TRA000122/01, 35–6. More direct evidence of their participation was established through the accomplice witness testimony of Witness LAI, but this was ultimately rejected by the court. See ICTR–99–46, TRA000254/2, [*Cyangugu*] – *Ntagerura et al* – *Redacted Transcript of 24/01/2001*, 24/01/2001, 1–49.

¹⁸ See for instance the findings in *Government 1* about wide spread occurrence of violence (including sexual violence) in regions far from the accused. ICTR–98–44–4803/1, 201–58. See also, *Prosecutor v. Jean Baptiste Gatete*, Case No. ICTR–00–61 (hereafter ICTR–00–61), TRA005506/2, *Gatete – Redacted Transcript of 02/11/2009*, 02/11/2009, 46.

¹⁹ ICTR–00–61, CONTRA018674, *Gatete – Redacted Transcript of 02/03/2010*, 02/03/2010, 59; TRA005145/1, *Gatete – Redacted Transcript of 10/3/2010*, 10/3/2010, 49–57; ICTR–00–61, CONTRA018748, *Gatete, Redacted Transcript of 11/3/2010*, 11/03/2010, 24; ICTR–00–61, TRA005157/1, *Gatete, Redacted Transcript of 22/3/2010*, 22/03/2010, 11–4; and TRA005506/2, 42–3.

Its account therefore became narrowly focused on the violence in Rwanda as an isolated violent episode, to a greater extent than was required. The temporal jurisdiction, however, appeared to pose difficulties for the prosecution when attempting to establish the accused's responsibility for the crimes committed during 1994, as it was clear that much of the planning occurred prior to the commencement of the Tribunal's jurisdiction, which only began on 1 January 1994.²⁰ Adhering to this jurisdiction would have meant, for instance, that the OTP would not have been allowed to submit most editions of the *Kangura* newspaper—often seen as crucial to spreading ethnic hatred in the 1990s—as evidence against its editor Hassan Ngeze during the *Media Trial*, because all but two issues were published prior to 1994.²¹ Similarly, the time limit would have prevented the prosecution from presenting evidence of Ntagerura's, Bagambiki's and Gatete's role in preparing the terrain for genocide.

Significantly, however, the prosecution *did* submit evidence relating to events occurring prior to 1 January 1994. Despite the defence's frequent objection to this (as they claimed that the evidence was impermissible because it sat outside of the Tribunal's jurisdiction) the judges, on the whole, sided with the prosecution, meaning that the Tribunal's temporal jurisdiction was partially stretched.²² As such, the prosecution in *Cyangugu* was allowed to offer

²⁰ As will be recalled, a fear that the temporal jurisdiction would negatively affect the prosecution had contributed towards Rwanda's decision to vote against the creation of the Tribunal, *despite* winning a partial concession with this matter. S/PV.3453, 3453rd Meeting, 08/11/1994, 14.

²¹ ICTR-99-52-1323/1, 39; and Jean-Marie Biju-Duval, "Hate Media"—Crimes against Humanity and Genocide: Opportunities Missed by the International Criminal Tribunal for Rwanda', in Thompson, *The Media and the Rwandan Genocide*, 346–7.

²² This was particularly heavily litigated during Gatete. ICTR-00-61, ICTR-00-61-0025, *Gatete – Defence Preliminary Motions, Under Rule 72 of the Rules of Procedure and Evidence*, 12/04/2003, 5; ICTR-00-61, ICTR-00-61-0088, *Gatete – Defence Motion Raising Defects in the Prosecution Pre-Trial Brief of 19 August 2009*, 30/09/2009; ICTR-00-61, ICTR-00-61-0100, *Gatete, Decision on Defence Motion Raising Defects in the Prosecution Pre-Trial Brief of 19 August 2009*, 02/10/2009; ICTR-00-61, ICTR-00-61-0188, *Gatete, Decision on Defence Motion for Exclusion of Evidence and Delineation of the Defence Case*, 26/03/2010; ICTR-00-61, ICTR-00-61-010, *Gatete, Motion on Admissibility of Allegations Outside the Temporal Jurisdiction of the Tribunal*, 15/10/2009; ICTR-99-46, TRA000750/01, [*Cyangugu*] – *Ntagerura et al – Redacted Transcript of 06/06/2001*, 06/06/2001, 82–6; A/59/183-S/2004/601, *Report of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for*

evidence of Ntagerura's and Bagambiki's presence at a series of rallies in 1993, which were used to stir up hatred against the Tutsis, and they were also allowed to consider Ntagerura's role in training the Interahamwe during 1993.²³ This was *not*, however, a blanket provision, and these rulings attached limits to pre-1994 evidence.²⁴ Indeed, pre-1994 evidence was only permissible when the evidence went to establish: conspiracy;²⁵ a component of a crime where all the elements were *also* present in 1994;²⁶ or a historical context that either made the accused's behaviour or the violence *in* 1994 more intelligible.²⁷ As a result, the prosecution's account very much remained focused on events that occurred in 1994. If anything, the requirement that pre-1994 evidence had to be attached to events *in* 1994, heightened the courts' focus on 1994 and the sense of the teleological inevitability of the genocide.

This section has set out the way in which the law helped to determine the prosecution's accounts of the violence in Rwanda by framing and shaping the content of witnesses' testimonies in terms of the types of stories that they were to tell. This was true even in those instances where the prosecution was seeking to push back against the boundaries imposed by the statute—such as concerning the Tribunal's temporal jurisdiction—as the testimony was still perceived by the prosecution to be *legally relevant*. This was not, then, a repeat of *Eichmann* where the witnesses would be given centre stage to tell their account of what

Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994, 27/07/2004, 10–1; and ICTR–99–46, TRA000438/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 21/02/2001, 21/02/2001, 9.

²³ ICTR–99–46, TRA000124/01, [Cyangugu] – Ntagerura et al – Redacted Transcript of 10/10/2000, 10/10/2000, 63; and ICTR–99–46, TRA000131/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 21/11/2000, 21/11/2000, 22–44.

²⁴ The level of sufficiency of this window depended to a large extent on the type of perpetrator being tried. For Akayesu, a relatively low level bourgmestre with seemingly no role in the preparation of the genocide, the narrow window of the tribunal's jurisdiction was adequate to tell the story of Akayesu's criminality. Here, the genocide for Akayesu began with the assassination of President Habyarimana, and ended with Akayesu's retreat into Zaire. ICTR–96–4, ICTR–96–4–0003, *Akayesu – Indictment*, 13/02/1996, 1.

²⁵ ICTR–00–61, ICTR–00–61–0029, *Gatete – Decision on Defence Preliminary Motion*, 29/03/2004, 3.

²⁶ *Ibid.*, 3; ICTR–00–61–010, 5; and S/2004/601, 10–1.

²⁷ ICTR–00–61–0029, 3.

happened, *regardless* of the legal relevance. Rather, to be permitted to speak within the court the prosecution's witnesses had to contribute legally to the case at hand.

James Arguin, the former head of Appeals at the Tribunal, noted that there were instances when *not enough* control was exerted on the witnesses. This meant that on occasion the witness testimony, as constructed in court, was vague, confused and lacked sufficient specificity, which *limited* its legal value and opened it to attacks by the defence.²⁸ What is particularly interesting here, however, is both the sense that witnesses were on occasion seen as being given 'too much' space in order to testify—discussed in the following chapter—but also that the witnesses' testimony was at its most *powerful* within the courtroom, having the greatest chance of being accepted as a legal truth, when it was presented in a particular, *legally intelligible way*. What this suggests is that where possible the prosecution enhanced the legal focus of the witnesses' testimony and hence rendered archival records deeply imprinted by the law. The following section will continue this line of thought and enquire as to how law also worked to shape how the actors that populated the prosecution's accounts within the archive were presented.

²⁸ Head of Appeals – ICTR Office of the Prosecutor (Arusha, Tanzania: June, 2015). 'When testifying, witnesses cannot simply present their account of the events unimpeded by counsel or the judges. For example, witnesses may want to jump from introductory questions about who they are or where they were straight to describing the details of the sexual violence. Prosecution counsel must explain that it is necessary for the evidence to be presented in a logical way and, thus, witnesses must wait for questions to be asked. If witnesses jump ahead, their testimony may be cut off and their account might be difficult for the judges to follow'. OTP ICTR, 'Prosecution of Sexual Violence: Best Practices Manual for the Investigation and Prosecution of Sexual Violence Crimes in Post-Conflict Regions: Lessons Learned from the Office of the Prosecutor for the International Criminal Tribunal for Rwanda', (2014) (see Other ICTR Documents list), 54.

Constructing Actors

Perpetrators

Particular understandings of how perpetrators acted underpinned the prosecution's presentation of the accused, who in each of the cases here were presented as being purposeful, conscious, intelligent, and power hungry actors. The generalisability of the defendants' personalities and characteristics was, however, masked on the surface by what appeared to be very specific descriptions of each of the accused, their role in the violence, and their motivations for participating in the genocide.

During *Akayesu*, for instance, the prosecution's narrative structure initially captured the political nature of Akayesu's actions in a plotline that bore resemblance to Arendt's notion of the banality of evil.²⁹ Akayesu was not, the prosecution emphasised, an ideological zealot nor a rabidly racist figure whose participation in the genocide made sense due to some form of inner evil. He was, rather, a politician: a rational thinker that craved power. This meant that Akayesu resisted the violence against the Tutsis when it politically benefitted him, as a member of the main opposition party (the Mouvement Démocratique Républicain, MDR), to do so.³⁰ When, however, it suited him politically to support the genocide he became a willing genocidaire. The turning point, the prosecution argued, was a meeting held by the 'interim government'³¹ in Gitarama on 18 April 1994, where the interim government called for unity

²⁹ Arendt, *Eichmann in Jerusalem* (see Intro., n. 18).

³⁰ CONTRA001180, 75–76; and ICTR–96–4, CONTRA001193, *Akayesu – Transcript of 18/2/1997*, 18/02/1997, 59–73.

³¹ The 'interim government' was the name given for government that took charge in Rwanda after Habyarimana's assassination. This largely comprised of Hutu extremists, and was key to the execution of the genocide.

between the various parties in order to pursue the genocidal policy that could ensure that they could *all* retain power.³² Akayesu's *choice* here was either to participate in the violence (having spent two weeks defending his commune from external attacks) or face political ostracisation. Akayesu *chose* to retain his power and authority and became a willing participant in the genocide. This framework also helped to increase the credibility of some of the witnesses' evidence as it, for instance, offered an explanation of why Akayesu spent a number of days in crazed pursuit of prominent figures (such as Emphrem Karangwa) all over the Gitarama region.³³ This was, the prosecution explained—drawing on their account of Akayesu's personality—because they had challenged Akayesu's authority, and so to secure his political authority within the commune, and also to take *ownership* over the violence (and the political capital that came with this), he had to pursue and kill them.³⁴

During *Cyangugu* the emphasis was slightly different, as the defendants appeared to be more pre-disposed to participating in the genocide than Akayesu had been. Each was presented as a person closely linked to the *Akazu* (roughly translated as 'the President's House'), who had advanced in their careers by supporting those in power and their intentions to commit genocide. Bagambiki was préfet of Kigali-Rural during the orchestrated violence against the Tutsis in the Bugesera region in 1992, and he was promoted to the position of préfet of Cyangugu because of his continued loyalty to the regime.³⁵ The prosecution presented Ntagerura as a figure who maintained a sustained hostility towards the APA, blocked the introduction of the transitional government, and was hostile towards all opposition parties,

³² ICTR-96-4, Akayesu, *Audio Recording: Interview of Jean Paul Akayesu in Zambia*, 10/04/1996, Tape I, Side A; and CONTRA001175, 36-40.

³³ CONTRA001198, 42-118; CONTRA001197, 5-57; CONTRA001180, 21-64 and 143-56; and ICTR-96-4, ICTR-96-4-0459/1, *Akayesu – Judgement*, 02/09/1998, 97-106.

³⁴ CONTRA001175, 42-5; CONTRA001198, 97-100; and CONTRA001193, 61-70.

³⁵ ICTR-99-46, TRA001774/1, [*Cyangugu*] – *Ntagerura et al – Redacted Transcript of 24/09/2001*, 24/09/2001, 206.

because these processes would mean that he and his Akazu friends would have to relinquish power.³⁶ For Imanishimwe, whilst he had no prior track record of hostility towards the Tutsis before his alleged training of the Interahamwe in 1993, he also craved power and authority, was close to the Akazu, and even had General Nsabimana—a key person in the genocide—as a military ‘godfather’.³⁷ He, like Akayesu, would do anything for more authority.

I found similar stories of power and authority in the prosecution’s construction of Gatete as a criminal—albeit tinged more strongly with an inner willingness to commit violence.³⁸ Indeed, as the trials went on, it became clear that underneath the seemingly specific accounts of the accused’s characters lay the same understandings of what type of person these accused were and what motivated them to participate in the violence. The prosecution presented each of these as being intelligent persons, *conscious* and *rational* actors, in positions of responsibility who had the ability to decide between right and wrong.³⁹ However, instead of ‘doing the right thing’, they *chose* to commit violence in order to retain authority and power, and worse, they

³⁶ ICTR–99–46, ICTR–99–46–0130, [*Cyangugu*] – *Bagambiki – Ntagerura et al – The Prosecutor’s Pre-Trial Brief*, 03/07/2000, 5; and ICTR–99–46, TRA000207/01, [*Cyangugu*] – *Ntagerura et al – Redacted Transcript of 18/09/2000*, 18/09/2000, 43–5, 48–50, and 54–8.

³⁷ TRA000207/01, 55–7.

³⁸ What was also notable about the prosecution’s case against Gatete is that, unlike the other cases examined here, there was the least attempt by the prosecution to tell some thicker narrative about Gatete that made his actions make sense. This was, in part, because of the need to quicken the pace of the trials, which meant that, as will be discussed more shortly, the prosecution was more concerned with the discrete presentation of evidence. They were also, no doubt, aided at this stage by the fact that Judges had already sat on a number of cases and so were more familiar with details of the genocide. Tellingly, the prosecution’s opening and closing statements (where much of this detail was normally provided) during Gatete, and unlike those in *Cyangugu* or *Gatete*, did not even occupy a whole trial day session. ICTR–00–61, TRA001643/1, *Gatete – Redacted Transcript of 20/10/2009*, 20/10/2009; and ICTR–00–61, TRA005592, *Gatete – Redacted Transcript of 08/11/2010*, 08/11/2010.

³⁹ The tribunal prosecuted two different types of persons: those in senior positions of authority, and those who had committed particularly egregious acts of violence—people such as Yussuf Munyakazi. Even these latter types of defendants, however, were still presented as knowing, purposeful and conscious individuals, even if there was a greater sense of the accused’s ‘inner evil’. During the *Munyakazi* opening statement the prosecution both said that Munyakazi was ‘a villain; the devil who stripped his victims of everything it meant to be human’, but also that he ‘was not a stranger to the criminal enterprise and that he executed its objectives with great efficiency, in person and in concert with other members of the criminal enterprise with whom he shared the intent to commit genocide and extermination’. ICTR (Press Release), ‘Trial of Yussuf Munyakazi Starts’, 22/04/2000, (see Internet Materials list).

utilised their position of authority in order to mobilise others to commit acts of violence.⁴⁰

During Akayesu's sentencing hearing the prosecution argued:

Akayesu *consciously chose* to participate in the systematic killings that followed in Taba. He publicly incited people to kill in Taba. He also ordered the killing of a number of persons some of whom were killed in his presence and he participated in the killings. He also cautioned and supported through his presence and acts, the rape of many women at the bureau communal. (Emphasis added.)⁴¹

This plot line was further emphasised during *Akayesu* when the prosecution presented evidence of another bourgmestre from Akayesu's region who *did* manage to resist the violence throughout the genocide.⁴² With this the prosecution made it clear that Akayesu did not participate in the violence out of some form of coercion, or because the context meant he could do nothing else (the narrative framework adopted by his defence), but that it was a clear *choice* of Akayesu to do so.⁴³

The roots of these narratives lie with the law's enlightenment-driven understanding of individuals as conscious and rational actors. The accused's ability to *choose* to act, along with the calculations that they made about how their interests were best served (additionally using their intelligence to manipulate those around them), meant that they demonstrated that they were the conscious and rational actors that law required to find them guilty of wrong doing. This is central to the very possibility of criminal justice and also the righteousness of

⁴⁰ 'The other side of Akayesu is the side of him as an individual. 'We see him and we saw him in court as an articulate man, an intelligent man, a good public speaker. He is also a politician. He knows how to view and weigh the political scene. He's able to make the right political decision, at least that's what he believes, until the decision he made on the 18th of April 1994.' ICTR-96-4, CONTRA001235, *Akayesu – Transcript of 19/03/1998*, 19/03/1998, 20 59 and 63; ICTR-99-46, TRA002053/1, [*Cyangugu*] – *Ntagerura et al – Redacted Transcript of 11/08/2003*, 11/08/2003, 2; and ICTR-96-4-0003, 2-3.

⁴¹ ICTR-96-4, CONTRA001233, *Akayesu – Transcript of 28/09/1998 – Sentencing Hearing*, 28/09/1998, 15.

⁴² CONTRA001187, 6-113.

⁴³ When discussing Akayesu's actions during the closing statements the prosecution stated: '[A]nd what came to my mind was just one word in particular, one concept, and that was the word "betrayal."' CONTRA001235, 15. See also TRA002053/1, 2; and TRA005592, 11.

punishing wrong-doers. As Hegel argued, the intentional actor is so central to criminal law *that the act of punishment also becomes the perpetrator's choice*:

Punishment is the *right* of the criminal. It is an act of his own will. The violation of right has been proclaimed by the criminal as his own right. His crime is the negation of right. Punishment is the negation of this negation, and consequently an affirmation of right, solicited and forced upon the criminal by himself.⁴⁴

This way of viewing the world not only affected how the accused were understood, but it also determined how the violence itself was presented, having, as such, a significant impact on the archive. Violence within these narratives was never the result of chance. Rather, the violence was *always* the result of careful planning, instigation, an organised attack, intentional deceit, or *knowing* carelessness:⁴⁵ behind each attack there was *always* an individual that could be found responsible.⁴⁶ In *Gatete* the prosecution argued:

Forensic enquiry and the judgments of this Tribunal in the aftermath of this slaughter have established that what occurred in Rwanda cannot be simply wished away as the kind of spontaneous communal bloodletting that often goes with a violent transition of power, but that it was a genocide of the Tutsi organised at the highest levels of state which relied for its efficient execution on the local administration, political party functionaries, all supported by government troops, party militia and ordinary Hutu peasants mobilised for that purpose.⁴⁷

The prosecution's description of the defendants as rational conscious actors, along with the spotlight-style gaze on the accused, had a number of additional consequences for the prosecution's accounts. First, in a curious turn, the extent of the focus on the accused, and the emphasis on their responsibility and authority, rendered other perpetrators passive in the face of the accused's orders and instructions—unable to think or to say *no* to the calls to

⁴⁴ Hegel, *Philosophy of Right*, quoted on <https://www.marxists.org/archive/marx/works/1853/02/18.htm> (last accessed 25/05/2017).

⁴⁵ During the *Gatete* closing arguments, for instance, the prosecution also argued that part of Gatete's guilt came from his 'managerial like' organisation and overseeing of the violence in Byumba and Murambi. TRA005592, 10.

⁴⁶ The importance of the accused's intentions was further heightened at the Tribunal due to the additional 'intent' requirement attached to the crimes contained within the court's statute, such as the 'special intent' required for genocide or, similarly, the need to establish that a crime against humanity was committed as part of a broader systematic attack.

⁴⁷ TRA001643/1, 2.

violence.⁴⁸ During the prosecution’s closing arguments in *Akayesu*, for instance, they argued: ‘Everything that happened in Taba [was] due to Jean–Paul Akayesu’.⁴⁹ Indeed, crimes were committed in Taba because ordinary persons ‘were incited [...]. They went out and committed genocide based on encouragement from Jean–Paul Akayesu’.⁵⁰ Other perpetrators were only significant because the accused in some way influenced their capacity to act, or created the conditions whereby they *could* act. The prosecution, for example, emphasised that, prior to the rape of Witness OO by a number of Interahamwe, Akayesu had said: ‘take them’.⁵¹ The emphasis here was such that the perpetrators of the violence *became victims*:

[Akayesu] *used innocent people* to commit crimes, the motive of which *they were perhaps not fully aware of or were afraid to* disobey him [...]. Akayesu had *choices*. He rather became a willing, indeed an enthusiastic participant in the killing and the persecution of Tutsis by *choice*. Therefore, his responsibility is very severe. (Emphasis added.)⁵²

Second, the need to *heighten* the accused’s responsibility and to find them individually responsible for the commission of a crime—even when prosecuting under more collective modes of liability—meant that the context within which the accused acted was only drawn upon when this *enhanced* the responsibility of the accused rather than diminished it. This often limited the legal value of providing an understanding of the wider context to the charges. Therefore, whilst emphasising the accused’s responsibility, the prosecution could not also focus on the chaos brought about by the invasion of the RPF, the widespread socio–economic insecurity that significantly affected Rwanda in the build–up to the violence—and

⁴⁸ I think that this also offered the court a simple way of understanding how the violence in Rwanda spread so quickly. It is easier to imagine the violence as being the result of some intelligent and manipulative individuals than it is to consider the more complex social dynamics at play that led ordinary people to participate in the genocide. Something similar happened with the Tribunal’s emphasis on the importance of the media as a tool for preparing the ground for the genocide, despite the lack of evidence that this was effective at preparing the ground for the violence, see Scott Straus, *The Order of Genocide: Race, Power and War in Rwanda* (London, Cornell University Press, 2006), 135–50.

⁴⁹ ICTR–96–4, CONTRA001232, *Akayesu* – Transcript of 13/3/1998, 13/03/1998. See also *Prosecutor v. Augustin Bizimungu, Augustin Nindiliyimana, François–Xavier Nzuwonemeye and Innocent Sagahutu*, Case No. ICTR–00–56, ICTR–00–56–1123/1, *Judgement and Sentence*, 17/05/2011, 454.

⁵⁰ CONTRA001235, 18 and 146.

⁵¹ *Ibid.*, 89; and ICTR–96–4–0459/1, 173–4.

⁵² CONTRA001175, 58.

encouraged many to see the *value* of participating in the genocide—or that the accused may have been indoctrinated (like the masses) by an ideological campaign that rendered violence a legitimate mode of governance.⁵³ It is telling that, whilst an accused was often believed to have created a condition of chaos in which others committed crimes against their will, their own actions are never understood as occurring within such conditions. This also meant that there was little to be gained by the prosecutors, and potentially much to lose, by turning to the wider, particularly regional and international political, contexts that enabled the violence to occur.

To take one example: the international arms trade played a significant role in the Rwandan genocide, as it flooded the country with weapons, to the point where you could buy a grenade for the same price as a beer.⁵⁴ These weapons played a key role legally in establishing the guilt of the defendants. In *Gatete*, for instance, the prosecution argued that his delivery of grenades at Mukarange parish was not only evidence of Gatete's participation in the violence, but also, in the absence of more direct evidence, that he had planned the massacre (hence incurring a more severe form of liability).⁵⁵ Yet how he came to acquire these weapons and who supplied them—i.e., the explicit link to the international arms trade—was insignificant to the prosecution's case.⁵⁶ Other similar broader narratives that could not find a place within the prosecution's legally focused account included the role of France in arming and training

⁵³ Hintjens, 'Genocide in Rwanda' (see Chap. One. n. 14), 254–8; Mahmood Mamdani, *When Victims become Killers: Colonialism, Nativism, and the Genocide in Rwanda* (Oxford: Princeton University Press, 2014), 195–6; and Straus, *Order of Genocide*, 128–40.

⁵⁴ Nelson Alusala, 'The Arming of Rwanda and the Genocide', *African Security Studies* 13:2 (2004), 138; and Stephan Goose and Frank Smyth, 'Arming Genocide in Rwanda, the High Cost of Small Arms Transfers', *Foreign Affairs* 73:5 (1994), 86 and 93.

⁵⁵ TRA005592, 13–14.

⁵⁶ This would only have been otherwise, presumably, if the accused had personally brought weapons into the country, which might have highlighted their part in planning for the genocide.

the genocidaires in the build-up to the violence, which also worked contrary to the attempts to heighten the accused's responsibility and agency.⁵⁷

This particular decontextualising had the additional consequence of emphasising the *lack* of involvement of international actors in the violence itself as the genocide became the responsibility of a handful of Rwandese elite. This in turn enabled the international community to become the *bystander* to the violence once more, the innocent impartial onlooker that observed, but did not play any greater role in the genocide. This imagining appeared to influence the prosecution's decision to draw on members of the international community to act as 'background' witnesses, who were to provide 'neutral' and 'impartial' evidence of the occurrence of violence nationwide.⁵⁸ What was odd about several of these testimonies was that the witnesses were in fact poorly positioned to assist the court in understanding what happened due to their *lack of knowledge* about both the history of Rwanda and the intricacies of what happened in 1994.⁵⁹ These actors' unsuitability for this role further points to the fact that they were called for the purpose of acting out the 'neutral' and 'trustworthy' observer.

Victims

The statute also played a significant role in defining how victims were constructed within the courtroom. This was because each of the three crimes in the statute (as a result of a

⁵⁷ TRA000434/2, 75 and 778; and ICTR-99-46, TRA001272/2, [Cyangugu] – Ntagerura et al – Redacted Transcript of 17/05/2002, 17/05/2002, 55

⁵⁸ ICTR-96-4, CONTRA001185, Akayesu – Transcript of 17/1/1997, 17/01/1997, 49.

⁵⁹ One instance of this was their inability to identify who the attackers were and what political faction they came from. *Ibid.*, 143-4 and 200-14.

combination of the actus reus and *in chapeau* element) came with an additional stipulation as to the type of victim targeted by the particular act of violence.⁶⁰ As Campbell has noted, victims in international law are defined by their membership in a broader group who are seen as being the primary target of the crime *rather* than the individual.⁶¹ This fundamentally altered both who the prosecution acknowledged as a victim, but also, and crucially, why its account of the violence, constructed *through* the witnesses (often victims), and deposited within the archive, appeared as it did.

To be a victim of a crime against humanity, the individual had to have been targeted as part of a widespread or systematic attack against a group on political, national, ethnic, religious, or racial grounds.⁶² This was, for the most part, established by demonstrating the breadth of the violence at a national level committed against the Tutsis as an ethnic group and moderate Hutus as a political group. By drawing links between this and the violence presented within the case, the prosecution was able to argue that what occurred within the locality was not mindless violence, but was part of a broader strategy to eliminate or target a particular group. To this end, as discussed previously, ‘bystander’ witnesses—international actors in Rwanda during the genocide—provided evidence about the violence in different regions of the country. As the prosecution argued during *Akayesu*:

Your Honors, the isolated attacks or the isolated crimes that were alleged Akayesu had performed or committed, by themselves, alone, would not constitute crimes against humanity [...]. Akayesu’s isolated acts become crimes against humanity only when they are part of the systematic and widespread attack that has been taking place during the temporary jurisdiction that this Court has.⁶³

⁶⁰ Articles 2-4 of ICTR Statute.

⁶¹ Kirsten Campbell, ‘Victims and Perpetrators of International Crimes: The Problem of the ‘Legal Person’, *International Humanitarian Legal Studies* 2:2 (2011), 340–5.

⁶² Article 3 of ICTR Statute.

⁶³ ICTR-96-4, CONTRA001184, *Akayesu* – Transcript of 16/1/1997, 16/01/1997, 49.

For it to be a war crime, the victim had to be a civilian or a prisoner of war, and the act of violence had to be committed in the context of a non-international armed conflict.⁶⁴ As such, it was in the prosecution's legal interests to establish the non-combatant status of the victims of the crimes where possible.⁶⁵ When asking Witness S about the murder of Karangwa's brothers, the prosecution asked:

Prosecution: Do you know how they were dressed; were they in, I guess, normal civilian clothes or some sort of military uniform?

Witness: Yes. They were wearing civilian clothes.

Prosecution: And were they carrying any weapons, guns or anything like that?

Witness: Are you talking about Ephrem's brothers?

Prosecution: Yes?

Witness: They had no arms—no weapons.⁶⁶

In the majority of incidents, however, the very fact that attacks took place at sites of refuge—one of the most common sites of violence during the genocide—seemed sufficient to remove any doubt that the victims were non-combatants. The very site of the killing seemed to ensure that those attacked were seen as innocent victims, as this contributed towards establishing the actor's innocent and largely *passive* nature, which was a key characteristic of victimhood that developed within this discourse in contrast with the purposeful perpetrator. This emphasis on the victims' passivity was something that perhaps was an inevitable result of the court's focus on the acts of violence committed *against* them: acts of violence that were also frequently underpinned by a huge imbalance of power. But there were also moments when the witnesses' inability to act was emphasised to *heighten* their victim status:

Prosecution: When you were being taken to the house, were you being taken -- was this voluntary, or were you being taken by force?

⁶⁴ Article 4 of ICTR Statute.

⁶⁵ ICTR-96-4, CONTRA001182, *Akayesu – Transcript of 24/1/1997*, 24/01/1997, 12; ICTR-96-4, CONTRA001222, *Akayesu – Transcript of 23/10/1997*, 23/10/1997, 7 and 34.

⁶⁶ CONTRA001197, 14. See also TRA000254/2, 12; and ICTR-00-61, TRA005158/1, *Gatete – Redacted Transcript of 17/03/2010*, 17/03/2010, 49.

Witness: They dragged us by force.⁶⁷

The discourse's discomfort with more active victims was seen when the judges had to exonerate refugees that did fight back against the attackers. During the *Nizeyimana* judgement the judges, for example, argued: [T]he defensive efforts against attacks on the primarily displaced Tutsis at the parish [did not turn] them into combatants.⁶⁸

The most important framing of victimhood within the prosecution's accounts of violence, however, came as a result of the provisions of the Genocide Convention, which underpinned the court's legal definition of genocide, as the charge that the prosecution focused on most. For genocide, as noted, in addition to establishing that the accused was responsible for the commission of a crime, the prosecution had to establish that they also possessed the necessary *special intent* to commit the crime so as to destroy, in whole or in part, a group protected by the Genocide Convention. Whilst the shared similarities between the Hutu and Tutsis meant that the Tutsis did not easily match any of the four protected groups, the prosecution argued in their opening statement at *Akayesu* that the Tutsis were an 'ethnic' group.⁶⁹ As such any act of violence that was committed against them, with the intent that the Tutsis, as a group, would be destroyed as a result, would, the prosecution argued, establish the genocidal nature of the crime.

This meant that the prosecution repeatedly focused in on the ethnicity of the victims being attacked throughout the violence. When Witness K testified to the murder of refugees at the Taba communal office, the prosecution followed up by asking: 'Do you know whether or not

⁶⁷ CONTRA001222, 70.

⁶⁸ *Prosecutor v. Ildéphonse Nizeyimana*, Case No. ICTR-00-55, ICTR-00-55C-0536/1, *Judgement and Sentence*, 19/06/2012, 437.

⁶⁹ CONTRA001175, 67.

these people were Hutu or Tutsi?’⁷⁰ The centrality of the witnesses’ ethnicity to the prosecution’s strategy was such that even when a witness attempted to resist answering the question they were forced to comply:

Prosecution: How old are you?

Witness: I’m 30 years old.

Prosecution: What’s your ethnic group?

Witness: I am Rwandan.

Prosecution: How were you considered in 1994?

Witness: In 1994 I was Tutsi. But today in Rwanda there is no distinction between the ethnic groups; so, I am Rwandan.⁷¹

Similarly, after this witness had already resisted the prosecution’s question once, the prosecution asked:

Prosecution: Are you Hutu, Tutsi or another—from another ethnic group?

Witness: It’s not going to be—it’s difficult because every time when I’m asked a question about my ethnic group I always ask myself why is someone asking that question, given the fact that for a long time this kind of question always frightened Rwandans. Nowadays this issue no longer exists in our country, so this question seems to be a difficult one with regard to my security. I would like to know why are you asking me this question?⁷²

Due to the witness’s reluctance to answer the question, the court went into closed session in order to protect the witness from the consequences of divulging this information.⁷³

⁷⁰ ICTR-96-4, CONTRA001176, *Akayesu – Transcript of 10/1/1997*, 10/01/1997, 55 and 60; CONTRA001222, 21 and 24; CONTRA001195, 117; ICTR-96-4, CONTRA001224, *Akayesu – Transcript of 27/10/1997*, 27/10/1997, 13; CONTRA001227, 17; ICTR-99-46, TRA000218/1, *[Cyangugu] – Ntagerura et al – Redacted Transcript of 25/10/2000*, 25/10/2000, 57; TRA000750/01, 4–57; TRA000122/01, 12; and ICTR-00-61, TRA005491/2, *Gatete – Redacted Transcript of 03/11/2009*, 03/11/2009, 84.

⁷¹ ICTR-99-46, TRA000443/1, *[Cyangugu] – Ntagerura et al – Redacted Transcript of 02/05/2001*, 02/05/2001, 4.

⁷² ICTR-99-46, TRA000444/2, *[Cyangugu] – Ntagerura et al – Redacted Transcript of 03/05/2001*, 03/05/2001, 32.

⁷³ *Ibid.*,

As time went on, the ethnocentricity of the prosecution's and the Tribunal's understanding of violence increased. When a witness answered 'Tutsi' to the question 'what is your ethnicity?' it became clear that it was almost certainly going to be a 'victim's' testimony, and if they responded 'Hutu' it would be a 'perpetrator's' testimony.⁷⁴ The strength of this association is seen with this following exchange:

Prosecution: Do you know why they were killed? Or maybe let me rephrase the question. What was the ethnic group of the victims, of those three victims that night?

Witness: They were Tutsi.⁷⁵

Here, the prosecution realised that their original question would be objected to, because it would produce a speculative answer from the witness, and so reformulated the question in order to extract an answer that would make sense within the Tribunal's ethnocentric discourse of victimhood. Indeed, whilst other victims (Hutu, but never Twa to my knowledge)⁷⁶ could enter the courtroom under different charges, such as crimes against humanity or war crimes, during *Gatete* (which was one of the Tribunal's last trials) the prosecution *only focused on Tutsi victims*; in the pre-trial brief and the supporting statements, there was *no* mention of Hutu victims.⁷⁷

⁷⁴ Even as someone who attempted to critically engage with these transcripts, due to the regularity with which these ethnic identities became associated with either victimhood or perpetratorhood, I too begin pre-judging the testimony before they had even begun.

⁷⁵ ICTR-99-46, TRA000251/2, [*Cyangugu*] – *Ntagerura et al* – *Redacted Transcript of 18/01/2001*, 18/01/2001, 81.

⁷⁶ Regardless, as Hutu's could not be recognised as victims of the genocide, this meant they were always considered less significant victims within this discourse, which held genocide to be the 'crime of crimes'. This was even more so for victims of crimes perpetrated by the RPF. As Goldstone stated: 'The RPF crimes were revenge crimes. It is absolutely accepted that these crimes did not amount to genocide. On a scale of one to ten, the genocide was a ten. Those who aided and abetted were eights and nines. The crimes committed by the RPF, however, would have been at fours and fives if accepted.' 'Moving Forward: A Reflection on Current Issues Facing International Criminal Justice with Richard Goldstone', *Human Rights Brief* 21:2 (2014), 34.

⁷⁷ ICTR-00-61, ICTR-00-61-0079, *Gatete* – *Prosecutor's Pre-Trial Brief (Pursuant to Rule 73bis (B) of the Rules of Procedure and Evidence)*, 21/07/2009, 21 and 36.

Whilst the focus on the ethnicity of the victims went some way towards establishing the special intent required to find the accused guilty of genocide (demonstrating as it did that victims had clearly been singled out during the violence), two other methods were drawn on to demonstrate the accused's intent. The first was, as discussed above, demonstrating the accused's tendency towards discriminating against Tutsis prior to the genocide.⁷⁸ Whilst legally incapable of leading towards a guilty verdict on its own (as the court ruled that evidence of the defendants' preponderance towards criminality lacked probative value), it produced a narrative where the accused's future discriminatory and genocidal practices made sense. The second was producing evidence of the accused's own public declarations against the Tutsis, especially where this included implicit or explicit calls for their destruction and where possible their incitement of others to attack the Tutsis.⁷⁹

Prosecution: Madam Witness, Mr. Gatete had said to -- why they had not got rid of the dirt. Who did you understand him to mean by 'the dirt'?

Witness: The dirt meant the Tutsi⁸⁰

Evidence of this could be subtler, and during *Cyangugu* the prosecution was at pains to emphasise Ntagerura's and Bagambiki's support for an anti-Tutsi message that had been delivered at a meeting they had participated in:

Prosecution: Did you specifically notice whether Ntagerura was applauding and smiling?

Witness: Yes, he did applaud.

Prosecution: Did you specifically notice whether Bagambiki was applauding and smiling?

Witness: Yes. All the people that I named were applauding.⁸¹

⁷⁸ ICTR-99-46-0130, 5; TRA000207/01, 43-5, 48-50, and 54-8; TRA001774/1, 60-99; and CONTRA001176, 20-3.

⁷⁹ CONTRA001180, 61-2; and CONTRA001186, 49-53.

⁸⁰ TRA005506/2, 78. See also ICTR-00-61, TRA005459, *Gatete – Redacted Transcript of 05/11/2009*, 05/11/2009, 24.

⁸¹ TRA000131/1, 99.

It must be stressed that there was nothing inevitable about this link between Tutsis as an *ethnic* group and victimhood. Whilst it is certainly true that the Tutsis were the main target of the genocide, it is also the case that thousands of Hutus were killed alongside them *in the same act of violence as a result of the same logic*. The genocide should be understood fundamentally as a *political* act which, whilst pursued at a local level for a variety of different reasons, was designed and executed so as to ensure that a small political clique could retain *political* control of the country, something that the APA and multiparty democracy threatened.⁸² The nature of the Genocide Convention, and its failure to protect political groups (due to the Soviet Union's fear during its drafting that this might lead to accusations that they had committed genocide) prevented victims of the genocide from maintaining a political identity. Thus, whilst the accused's reasons for participating in the violence in the first place were substantially political, the violence itself remained largely *apolitical* within these accounts. The victims were killed *as Tutsis* not as political threats to the status quo, not as suspected affiliates with the invading RPF forces, not as a group that would, *in order to gain political power*, commit genocide *against* the Hutus if necessary, and not as economic beneficiaries of the colonial past—accounts that circulated throughout Rwanda in the build-up to the genocide. The ethnicisation (and depoliticisation) of the violence flattened all of this out. The prosecution's understanding here was seen most clearly in the way they explained their interpretation of crimes against humanity in *Akayesu*, where they argued that the widespread attack occurred against Hutus *and* Tutsis on political *and* ethnic grounds.⁸³ Even, then, when there was a provision to portray the Tutsis as *political* victims, the prosecution

⁸² René Lemarchand, 'The 1994 Rwanda Genocide', in *The Genocide Studies Reader*, ed. Samuel Totten *et al.* (Abingdon: Routledge, 2009), 484; Hintjens, 'Genocide in Rwanda', 247–8 and 261; Gérard Prunier, *The Rwanda Crisis: History of Genocide* (London: Hurst & Company, 1995), 159–64; Lee Fujii, *Killing Neighbours: Webs of Violence in Rwanda* (London: Cornell University Press, 2009), 5, 46, 50, 76–7 and 89; Straus, *Order of Genocide*, 128–40.

⁸³ CONTRA001175, 45.

continued to present them in ethnic terms.⁸⁴ To do otherwise would have complicated their genocide narrative, as would, no doubt, have been the case if they had highlighted more Hutu victims of these massacres.⁸⁵

This allocation of victimhood to Tutsis alone was made more problematic by the flipside of this; Hutus as a group became increasingly associated with perpetratorhood, with the prosecution also emphasising the ethnic component of the attackers.⁸⁶ An example of this understanding of perpetratorhood can be seen in this exchange during *Gatete* where the court required clarification for why a Hutu might have felt victimised:

Madam President: And why were you afraid? In view of your ethnicity?

Witness: Madam President, I would like to point out to you that the killings were not committed by all the Hutus. Hutus who refused to kill people were characterised as accomplices, and they could very easily be killed for that.⁸⁷

With the addition of the inevitable compliance of the masses with the calls to participate in the violence, noted above, *all* Hutus within these accounts seemingly became always already perpetrators of violence—complicit in the crime by default. As with the association between Tutsis and an ethnic category, this flattened out the meaning and symbolism of the violence during the genocide. This rendered the violence as an inter-ethnic conflict rather than something that took on different forms at different moments in different localities. When Witness JJ described the attackers without being prompted, she noted that they were ‘our

⁸⁴ The prosecution also argued that one of the reasons that Akayesu didn’t participate in the killing in the first weeks was because he was unsure if it ‘was it a political thing, or [...] ethnic’ CONTRA001235, 39.

⁸⁵ ICTR-96-4, CONTRA001183, *Akayesu – Transcript of 15/1/1997*, 15/01/1997.

⁸⁶ For an example of this see TRA000218/1, 62 and 71; and TRA005145/1, 64.

⁸⁷ ICTR-00-61, TRA005507/2, *Gatete – Redacted Transcript of 10/11/2009*, 10/11/2009, 32.

neighbors'.⁸⁸ It was only after the intervention of the prosecution that this became reframed in ethnic terms.

Prosecution: These people who destroyed your home and ate your livestock, your neighbors, do you know whether or not they were Hutu or Tutsis?

Witness: They were Hutus.⁸⁹

This section has demonstrated the way in which the law framed the prosecution's account in particular ways as it sought to establish the defendant's guilt. This resulted in accounts which were legally constrained—temporally, geographically, and substantively—and which revolved around the actions of the accused. They were also driven by a particular understanding of perpetrators as conscious and knowing actors, and produced particular images of the victims, as largely passive figures within these episodes. This also showed how the legal provisions under the Genocide Convention resulted in a *heightened* sense of the ethnic nature of the violence. As such, this points to one of the first ways that some of the goals and priorities of the court came into tension with each other as the prosecution's account produced a deeply problematic split between the Tutsis as the always already victims and Hutus as the always already perpetrators. The law's framing of genocide and its Manichean division of actors into innocent victims and guilty perpetrators and the prosecution's repeated emphasis on the *identities* of those that participated in the violence jointly concealed the fluidity and *political* (and therefore contestable) nature of these identities and rendered them fixed and inevitable.⁹⁰ In this very important way, then, the account as produced within the archive works contrary to the goal of reconciliation, as there seems within this way of understanding little chance of bringing together two sides that are

⁸⁸ CONTRA001222, 20.

⁸⁹ *Ibid.*, 21.

⁹⁰ Ruti Teitel, 'The Universal and the Particular in International Criminal Justice', *Columbia Human Rights Law Review*, 30:285 (1998), 288; and Brown and Ni Aolain, 'Through the Looking Glass' (see Intro., n. 85).

depicted as always, and inevitably, opposed to each other.⁹¹ This sense of an *ingrained* victimhood is also often politically mobilised to violent ends. This much was shown in the build-up to the genocide when the Hutu extremists constructed a strong collective memory of the Hutus' past status as victims under the Tutsis' monarchical rule to legitimise the genocide against them.⁹²

Politicising the Prosecution?

So far, this chapter has explored the prosecution's construction of its account of violence by considering the legal elements that had to be met in order to establish the defendants' guilt. This section will augment this argument, by examining the extent to which other factors *outside* of the legal interests of the case came to influence the way in which the prosecution constructed their accounts of violence contained in the archive. This questions the idea that courtrooms are hermetically sealed spaces and that law can be separated from politics. In doing so I will focus on two issues: the influence of gendered and patriarchal discourses on the prosecution's accounts; and the prosecution's understanding of the strategic function of the court, and the extent to which it pursued extra-judicial goals whilst securing convictions against the accused.

Gender Politics at the Tribunal

⁹¹ See also Humphrey, 'International Intervention' (see Intro., n. 21), 502.

⁹² Mamdani, *When Victims Become Killer*, 189–96.

Gendered discourses penetrated the prosecution's accounts of violence to give them a distinct appearance. The gendered nature of international criminal justice, as discussed in the Introduction, has been emphasised by scholars, such as MacKinnon, Walsh, and Campbell.⁹³ Each has shown the ways in which gendered discourses come to shape the practises of international courts and how evidence is treated and assessed, showing that systematically gender-based crimes are under-investigated, and when prosecuted are subjected to higher standards of proof.⁹⁴ These patterns were clearly evident at the ICTR as the OTP treated gender-based violence as a crime of secondary importance.⁹⁵

The OTP's problem in this respect finds its roots in the initial investigations, which set the tone for how they were to handle incidents of sexual violence throughout its history. Investigators ignored these crimes from the outset, with a former member of the Tribunal noting that 'Many of the investigators said, "Well, we can't be concerned about some women who got raped. We can't divert resources to investigate those crimes. We had a genocide down here [...]"'.⁹⁶ Elsewhere it has been noted that, even when enquiries into these types of crimes were made, they were done without taking into consideration the particular sensitivity, and heightened trauma, that came with these crimes.⁹⁷ Whilst this did partially improve with the creation of a sexual violence investigation unit in 1998, discussed in the following chapter, the failure to explore sexual violence crimes sufficiently in the initial instance put the

⁹³ Kennedy, *A Critique of Adjudication* (see Intro., n. 85).

⁹⁴ Walsh, 'Gendering International Justice' (see Intro., n. 92), 33–4; Campbell, 'Testimonial Modes' (see Intro., n. 2), 92–5; MacKinnon, 'Sexual Violence' (see Intro., n. 92), 214–5; and MacKinnon, 'Crimes of War' (see Intro., n. 93), 59–87.

⁹⁵ Beyond this, as Franke notes, gender-based violence was (and remains) problematically and narrowly conceived of as sexual violence alone to the detriment of other crimes that also specifically target women. Franke, 'Gendered Subjects of Transitional Justice' (see Intro., n. 48), 822–3.

⁹⁶ Jina Moore, 'This Is the Story a UN Court Didn't Want Three Rape Survivors To Tell', *Buzzfeed* (see Internet Materials list).

⁹⁷ Nowrojee, 'Your Justice Is Too Slow' (see Intro., n. 93), 12–3.

OTP on its back foot, from which it never seemed to recover.⁹⁸ This problematic approach, moreover, continued throughout the Tribunal's history and these crimes both remained insufficiently investigated and were also poorly incorporated into the prosecution's case strategy.⁹⁹

An example of this failure is the prosecution's handling of sexual violence evidence during *Cyangugu*. The initial indictment did not contain any specific reference to sexual violence charges.¹⁰⁰ The first suggestion that the prosecution intended to present evidence that related to sexual violence came on 2 December 1999 when the prosecution submitted an amended indictment that specifically contained sexual violence charges.¹⁰¹ However, this was then withdrawn two months later, and with this the specific references to sexual violence were seemingly removed from the case.¹⁰² The situation became murkier still as both the prosecution's pre-trial brief and opening statement in *Cyangugu* specifically noted the intention to prosecute the accused for sexual violence crimes, specifically linked to the charge lodged against Bagambiki and Imanishimwe in the indictment relating to their participation in

⁹⁸ E/CN.4/1998/54/Add.1, *Further Promotion and Encouragement of Human Rights and Fundamental Freedoms, including the Question of the Programme and Methods of Work of the Commission Alternative Approaches and Ways and Means within the United Nations System for Improving the Effective Enjoyment of Human Rights and Fundamental Freedoms Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences, Ms. Radhika Coomaraswamy Addendum Report of the Mission to Rwanda on the Issues of Violence Against Women in Situations of Armed Conflict*, 04/02/1998, 12–3; *Prosecutor v. André Ntagerura*, Case No. ICTR–96–10 (hereafter ICTR–96–10), ICTR–96–10A–0272, *Ntagerura – Prosecutor Request for Leave to File an Amended Indictment*, 02/12/1999, 12; and A/53/429, *Report of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994*, 23/09/1998, 9–10.

⁹⁹ Harhoff noted that one of the problems here could have been the gender imbalance of the OTP, which was dominated by men. Appeals Judge (2016).

¹⁰⁰ ICTR–96–10, ICTR–96–10A–0224, *Ntagerura – Amended Indictment*, 29/01/1998; and *Prosecutor v. Emmanuel Bagambiki et al.*, Case No. ICTR–97–36 (hereafter ICTR–97–36), ICTR–97–36–0071, *Bagambiki – Imanishimwe – Indictment – Redacted*, 09/10/1997, 7.

¹⁰¹ ICTR–96–10A–0224, 4–5.

¹⁰² ICTR–99–46, ICTR–99–46–0046, [*Cyangugu*] – *Bagambiki – Ntagerura et al – Notice of the Prosecutor to Withdraw All Pending Motion*, 14/02/2000.

the abduction and killing of refugees from the Karamapaka stadium.¹⁰³ The matter came to ahead when Witness LBH started testifying to the occurrence of sexual violence at the Karamapaka stadium but was stopped by a defence objection that they had not been made aware of the prosecution's intention to press charges on this matter, noting the absence of sexual violence in the indictment. The prosecution's argument that the pre-trial brief, opening statement, *and the amended indictment* (even though it was withdrawn) had put the defendants on notice was ultimately rejected by the judges, and the prosecution were subsequently prohibited from presenting evidence concerning sexual violence.¹⁰⁴ Following this an *amicus curie* was submitted that called for the prosecution to amend their indictment so as to include sexual violence charges, but this was rejected by *both* the judges and the prosecution and as such sexual violence was to remain absent from the prosecution's account of violence in *Cyangugu*.¹⁰⁵

Part of the reason that the prosecution did not follow through with the amended indictment was the result of a decision within the OTP to avoid amending the indictment *unless absolutely necessary* so as not to slow down the trials.¹⁰⁶ However, in this instance it should have been clear that the prosecution was going to face difficulty with pursuing sexual violence charges under the explicit accusation that Bagambiki and Imanishimwe had abducted and killed refugees from Karamapaka. At best this shows the prosecution chancing their luck and hoping to get away with something that they should have at least expected they

¹⁰³ ICTR-99-46, ICTR-99-46-0072, [Cyangugu] – Bagambiki – Ntagerura et al – The Prosecutor's Preliminary Pre-Trial Brief, 24/05/2000, 13-4; and ICTR-99-46, TRA000542/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 18/09/2001, 18/09/2001, 53.

¹⁰⁴ TRA000434/2, 13-6 and 103-5; and ICTR-99-46, TRA000437/2, [Cyangugu] – Ntagerura et al – Redacted Transcript of 20/02/2001, 20/02/2001, 1-2.

¹⁰⁵ ICTR-99-46, ICTR-99-46-0270, [Cyangugu] – Imanishimwe – Response of the Defence for Samuel Imanishimwe to Amicus Curiae Application Filed by the NGO Coalition for Women's Human Rights in Conflict Situation, 27/04/2001; and ICTR-99-46, ICTR-99-46-0287, [Cyangugu] – Bagambiki – Ntagerura et al – Decision on the Application to File an Amicus Curiae Brief According to Rule 74 of the Rules of Procedure and Evidence Filed on Behalf of the Ngo Coalition for Women's Human Rights in Conflict Situations, 24/05/2001.

¹⁰⁶ Head of Appeals (2015).

wouldn't. However, their treatment of other evidence of sexual violence crimes, as previously discussed, suggests that this is simply another incident when the prosecution appeared to be indifferent to gender-based violence.

This approach, along with other factors discussed in Chapter Five, accounts for the OTP's incredibly poor conviction rate for these crimes, which saw only twelve convictions survive the appeals stage.¹⁰⁷ This is *despite* the common estimate that up to 250,000 women were sexually assaulted during the genocide, which means it would be reasonable to expect that, given their senior positions in the genocide, far more of the ICTR's accused should have been held to account for this type of crime.¹⁰⁸ This failure sits uncomfortably with the OTP's *celebration* of their achievements in tackling sexual violence crimes, particularly its contribution to sexual violence jurisprudence, which has led it to produce a handbook for the prosecution of sexual violence, aimed at assisting other jurisdictions improve their practice in relation to these crimes.¹⁰⁹

Gendered discourses also came to influence the prosecution's account of violence in other ways, specifically in contributing towards defining the characteristics of both perpetrators and victims during the genocide. The gendered nature of the victims was highlighted as the prosecution sought to emphasise the 'feminine' identities of those attacked. This seemingly demonstrated their passivity, innocence, and non-combatant status, which rendered them

¹⁰⁷ Failures with sexual violence charges happened for a number of reasons. However, it is significant that this poor record was in part caused by conscious decisions made by the OTP. For instance, in two cases they decided to remove sexual violence charges by amending the indictments, and in four separate cases these were removed during guilty plea negotiations. OTP ICTR, 'Prosecution of Sexual Violence', Appendix B; and Nowrojee, 'Your Justice Is Too Slow', 3.

¹⁰⁸ Scott Straus, 'The Historiography of the Rwandan Genocide', in *Historiography of Genocide*, ed. Dan Stone (New York: Palgrave MacMillan, 2008), 529.

¹⁰⁹ James Arguin, 'Prosecution of Sexual Violence', *ICTR Legacy Symposium – 20 Years of Challenging Impunity*, 06/11/2014.

illegitimate targets of violence.¹¹⁰ As such, attacks perpetrated against women, children, and the elderly were also, where possible, emphasised within the prosecution's accounts, as witnesses were asked questions such as: 'Do you know whether women and children were killed in Taba province?'¹¹¹ During *Cyangugu* Judge Ostrovsky asked a witness:

And please, tell me. You attended several cabinet meetings, starting from 16th April. During those cabinet meetings, was there ever a discussion of extermination of *women, elderly persons, children; that is, civilian population*. And you referred to the term 'the Tutsi of within'. *That would include the civilian population; i.e., women, children and elderly persons.* (Emphasis added.)¹¹²

The gendered nature of the targets of the violence would suffice to show that violence was committed against people that were in no way actively involved in the conflict and who could therefore be considered victims (as opposed to legitimate casualties of war).¹¹³

¹¹⁰ CONTRA001197, 143–4; and S/PV.3371, 3371st Meeting, 30/04/1994, 2.

¹¹¹ CONTRA001184, 37. See also ICTR–96–4, CONTRA001179, *Akayesu – Transcript of 21/1/1997*, 21/01/1997, 57; CONTRA001195, 108 and 117; ICTR–96–4, CONTRA001208, *Akayesu – Transcript of 18/11/1997*, 18/11/1997, 115; CONTRA001183, 139; S/1994/1157/Add.1, *Situation of Human Rights in Rwanda: Third Report on the Situation of Human Rights in Rwanda Submitted by Mr. René Degni-Ségui, Special Rapporteur of the Commission on Human Rights, Under Paragraph 20 of Resolution S–3/1 of 25 May 1994*, 14/11/1994, 11; CONTRA001222, 30 and 34; ICTR–99–46, TRA000527/2, [*Cyangugu*] – *Ntagerura et al – Redacted Transcript of 13/03/2002*, 13/03/2002, 75; and TRA005145/1, 64. This understanding of the relationship between gender and victimhood existed (and still does) outside of the tribunal, and was clear, also, in the UN's Agenda for Peace: 'It requires as well a deeper understanding and respect for the rights of minorities and respect for the needs of the more *vulnerable groups of society, especially women and children* (emphasis added).' A/47/277–S/24111, *An Agenda for Peace: Preventative Diplomacy, Peacemaking and Peace-Keeping: Report of the Secretary-General Pursuant to the Statement Adopted by the Summit Meeting of the Security Council on 21 January 1992*, 17/06/1992, 23. Establishing the gender of those targeted also seemed to establish that these attacks were more severe and seemingly more clearly established the perpetrator's *intent*. The rationality here appeared to be that if perpetrators—who were always seen as masculine figures—had attacked a woman or child then this could not have been an accident, but had to have been preplanned, or that it demonstrated their particular extreme desire for the act of violence to have taken place.

¹¹² ICTR–99–46, TRA001277/2, [*Cyangugu*] – *Ntagerura et al – Redacted Transcript of 28/05/2002*, 28/05/2002, 80.

¹¹³ The tension in this association between childhood and victimhood at the Tribunal was particularly strained by the fact the Interahamwe were effectively a 'youth' militia (even if this changed somewhat after the genocide began). Within this discourse, children's' participation in the violence, through groups like the Interahamwe, was also presented as being against their will, which allowed them to remain as recognisable victims. See E/CN.4/1997/61, *Question of the Violation of Human Rights and Fundamental Freedoms in any Part of the World, with Particular Reference to Colonial and Other Dependent Countries and Territories Report on the Situation of Human Rights in Rwanda Submitted by Mr. René Degni-Ségui, Special Rapporteur of the Commission on Human Rights, Under Paragraph 20 of Resolution S–3/1 of 25 May 1994*, 20/01/1997, 9 and 32.

Gender also played, less subtly, a role in defining perpetratorhood. With very few exceptions (namely the prosecution of Pauline Nyiramasuhuko), women only featured in the narratives constructed by the prosecution as victims of the violence, never as the perpetrators. Whilst some might object to this argument and say that men *were* responsible for the vast majority of the ‘actual’ violence that occurred in Rwanda, this would only be because, like the courtroom, their gaze fell onto the final transaction of violence rather than the context that enabled it to occur. Moreover, there was the possibility of introducing more evidence of the ‘direct’ participation of women in the violence in Rwanda, as was found by the Special Rapporteur on Violence against Women:

The genocide in Rwanda was sadly characterized by a new phenomenon which has not been observed in any armed conflict in history, namely the massive involvement of women as perpetrators of the violence. Survivors testify that not only did women take part in the general violence and fighting during the conflict, but were also actively involved in committing violence against other women, including acts of sexual violence.¹¹⁴

The absence of the role that women played in the violence (with not one witness even presenting evidence of women performing a supporting or aiding role to the violence) only fed back to reaffirm the gendered understanding of victimhood.

Prosecution Strategy and Strategic Function

The final element that I want to explore is to what extent the prosecution used the trials in pursuit of other, extra-judicial goals¹¹⁵ and how this influenced the way they constructed their cases (and hence produced records for the archive). There were signs that, at various points in

¹¹⁴ The report also notes that ‘[i]n the 19 central prisons in Rwanda, 2,687 prisoners out of a total of 77,349 (or 3.7 per cent) are women’. E/CN.4/1998/54/Add.1, 24.

¹¹⁵ This refers to any goal that is not purely concerned with securing a verdict against the accused. As will be discussed below, this is not to say that these are necessarily ‘non-legal’ or in conflict with the legal processes of the court.

its history, the OTP was concerned with doing more than simply establishing the criminality of the accused.¹¹⁶ Particularly during the early years of the prosecution, under the guidance of Prosecutor Richard Goldstone, the OTP appeared to pursue a strategy that attempted to establish the guilt and responsibility of the accused, whilst simultaneously also seeking to consciously expand and develop international law (*beyond the legal needs of the case at hand*) and to produce a *just* account of the violence.¹¹⁷

It was clear that the prosecution tried to influence the state of the jurisprudence to ensure that it was left in a more developed state than when found, and that this aspect of its purpose (and legacy) increased in importance over time.¹¹⁸ This included contributing to developments in the Tribunal's jurisprudence so that: rape could be considered an act of genocide; superior responsibility could apply to non-military structures—in either government or civilian organisations; and, along with the ICTY, joint criminal enterprise (JCE) could be used as a mode of participation.¹¹⁹ As such the prosecution worked within *and pushed beyond* the boundaries of the statute to redefine what those boundaries, highlighting the dynamic and performative nature of law.¹²⁰

¹¹⁶ This is, of course, not to deny that the prosecution of suspected genocidaires remained throughout the prosecution's, and Tribunal's, main purpose. Indeed, it was suggested to me, as discuss shortly, that the concentration on this at the Tribunal's outset negatively affected some aspects of the archive itself, as the sheer focus on this meant that little thought was put into how best to preserve the records of the Tribunal's activities beyond the trial records. This meant that some administrative records, along with some of the OTP's own records (not controlled by the Registry) from the Tribunal's early years, were not well organised or maintained. A lack of concern with this broader archive threatened its very existence as these 'less significant' records were for many years left in shipping containers rotting away. Member of ICTR Archives Unit – (Arusha, Tanzania: June, 2015); and Senior Information and Evidence Section Officer – ICTR Office of the Prosecutor (Arusha, Tanzania: June, 2015).

¹¹⁷ Goldstone, 'Justice as a Tool for Peace-making' (see Intro., n. 4).

¹¹⁸ Head of Appeals (2015).

¹¹⁹ *Prosecutor v. Alfred Musema*, Case No. ICTR-96-13, *Judgement and Sentence*, 27/01/2000 (see Other ICTR Documents list), 49; ICTR-98-44-4803/1, 02/02/2012, 261–272; Walsh, 'Gendering International Justice', 40.

¹²⁰ For a good discussion of this see: Danner, 'Guilty Associations', 75–169; and A/60/229-S/2005/534, *Report of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan*

Several examples from the *Akayesu* appeals also demonstrate this. On appeal the prosecution alleged that the trial chamber's definition of crimes against humanity had wrongly added the condition that a perpetrator had to have acted with discriminatory intent.¹²¹ They argued that the law *could be read* to imply that, while the attack overall had to be motivated by discriminatory intent (i.e., it had to target a specific group), unlike with genocide the accused did not personally need to possess discriminatory intent. During the same appeal, the prosecution also argued that the trial chamber had erred in law by declaring that for non-military personnel to be found guilty of war crimes they had to have held a position in government that led to an obligation to have supported the war effort (referred to as the 'government test').¹²² They further argued that the trial chamber had needlessly, and wrongly, decided that for an act to be found as 'instigation', it had to be both 'direct' and 'public'.¹²³ More significantly, the prosecution called for the appeals chamber to interpret the provisions of the statute to allow for the appeals chamber to rule directly on legal errors *which had no bearing on the outcome of the case* (prohibited under Article 24 of the Statute) —an argument accepted by the judges.¹²⁴

The motivations behind improving the jurisprudence were manifold. Partly, this reflected a concern that the jurisprudence was negatively affecting the OTP's prosecutions elsewhere. In the *Akayesu* appeal, the OTP noted that whilst the imposition of the 'government test' had not negatively impacted on the findings made in *Akayesu*, it had during *Kayishema and*

Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994, 15/08/2005, 11.

¹²¹ ICTR-96-4, CONTRA000049, *Akayesu – Transcript of 1/11/2000 – Appeals Hearing*, 01/11/2000, 223–4.

¹²² ICTR-96-4, CONTRA000050, *Akayesu – Transcript of 2/11/2000 – Appeals Hearing*, 02/11/2000, 22; and ICTR-96-4, ICTR-96-4-0868/1, *Akayesu – Appeal Judgement*, 01/06/2001, 129–34.

¹²³ ICTR-96-4-0868/1, 141–4.

¹²⁴ CONTRA000049, 41; and *Ibid.*, 27–8 and 236–7.

Ruzindana, Musema, and Rutaganda.¹²⁵ These challenges were also advanced in order to ensure that the law developed in a way that meant it could adequately *capture* the violence in Rwanda, so as to show the accused's responsibility for the crimes committed.¹²⁶ This was perhaps most clearly the case with the development of JCE, which, whilst only very tenuously based on customary international law, allowed the prosecution to capture the accused's responsibility in those instances when they were more removed from the direct perpetration of violence than more traditional legal modes of participation allowed.¹²⁷ As will become more important later on, this also represented, as Martinez and Danner argued, the intervention of 'human rights methodologies' into the courtroom, whereby more expansive interpretations of the law were deemed permissible when compared with the more restrictive approach usually adopted in criminal law.¹²⁸ Finally, there was a sense of pursuing this types of interventions for reasons *beyond* the legal interests of the prosecution at the Tribunal but, as James Arguin put, where there was a 'public interest' to do so, where the jurisprudence was 'just wrong as a matter of public policy'.¹²⁹ Whilst this is, as argued below, a legitimate legal goal, there is also clearly a 'extra-judicial' element here as the OTP became concerned with the jurisprudence might impact on the world outside the court-room.

Second, the prosecution particularly under Goldstone, appeared to use trials didactically, as sites of law, history, and reconciliation.¹³⁰ For instance, the initial indictment policy was specifically designed to capture the history of the genocide, illustrating the full extent of the

¹²⁵ CONTRA000050, 22.

¹²⁶ *Ibid.*, 22–7.

¹²⁷ Carla Del Ponte, 'Investigation and Prosecution of Large-Scale Crimes at the International Level', *Journal of International Criminal Justice*, 4 (2006), 540 and 552.

¹²⁸ Danner 'Guilty Associations', 132–7.

¹²⁹ This was in reference to the appeals launched against Ndirabatswe for the trial chamber's ruling that he was *not* responsible for the crimes committed by subordinates *prior* to taking up his post. This was despite that Ndirabatswe knew about these crimes after he assumed control, and still failed to punish those responsible. Head of Appeals (2015).

¹³⁰ The prominent role that history would play at the trials was clear at *Akayesu*, as the prosecutor opened the case with a presentation on the history of Rwanda. *Supra* note 117, 485–504.

genocide, both in terms of the types of perpetrators that were responsible, but also the geographical reach of the violence. This concern led the OTP to indict a wide range of accused including: government ministers, bourgmestres, préfets, priests, business–persons, journalists, singers, doctors, military personnel, gendarmes, local militiamen, consellers, and other local persons of significance.¹³¹ Each of Rwanda’s seven prefectures were covered and a broad spread of crimes in each secured within the indictments. These indictments also captured the coordination between different types of actors, the movement of genocide—as ministers were sent back to their home regions to oversee the genocide, or where bands of zealot genocidaires moved between communes in order to kick–start the violence—and the local dynamics of the violence. The three trials analysed here capture these elements. In *Akayesu* the focus was on his local ownership of the killing as he pursued those that opposed his power within the commune; in *Cyangugu Ntagerura* represented the government minister sent back to his locality to oversee the violence, cooperating with military leaders (Imanishimwe) and local authorities (Bagambiki); and Gatete was the zealot who travelled around his area (having also returned from his position in government) leading a group of Interahamwe and ensuring that the genocide happened with a startling pace.¹³²

This is *not* to say that this resulted in a tension between the prosecution’s legal and extra-judicial goals. There was nothing incompatible with the legal needs of the court and the attempt to capture the full extent of the violence. Moreover, drawing on these broader historical narratives frequently *enhanced* the prosecution’s cases. As argued, these narratives helped both to link the crimes occurring within the locality to the national level violence and demonstrated the interlinked nature of the violence, which established both the accused’s

¹³¹ Moghalu, *Rwanda’s Genocide* (see Intro, n. 75), 84; and TRA001643/1, 2.

¹³² ICTR–96–4, *Akayesu*, *Audio Recording*: Interview of Jean Paul Akayesu in Zambia, 10/04/1996, Tape I, Side A; CONTRA001175, 36–40; ICTR–99–46–0130, 5; and TRA000207/01, 43–5, 48–50, and 54–8.

individual responsibility for the crimes committed and their role within the broader genocidal plan. The compatibility here of these goals was also seen in the way in which the prosecution attempted to construct ‘thick narratives’ around each of the accused in order to deepen the sense of their guilt (despite the commonality between the accounts that existed beneath the surface). In these instances, then, the prosecution’s multiple goals and priorities appeared to overlap.

Other evidence exists to support this notion that the prosecution pursued extra-judicial commitments alongside their legal ones. First, they often appeared to pursue charges that were not, strictly speaking, required to prove an accused’s guilt. In several instances, for instance, the prosecution’s pursuit of pre-1994 evidence cannot be explained by legal necessity alone. Even with the example above concerning Ngeze during the *Media Trial*, whilst adhering strictly to the temporal limits would have erased the role of his *Kangura* newspaper, there was more than enough evidence of his ‘direct’ participation in the violence in 1994 as one of the leaders of the CDR to have held him to account.¹³³ Rather, at least part of the concern here appeared to be with capturing the full breadth of the accused’s responsibility and role in the violence and to present an accurate picture of what they had done.¹³⁴ This argument was also explicitly used when the prosecution pushed for concurrent sentences, which whilst not elongating the accused’s prison term, more accurately captured the accused’s criminality and their role in the violence.¹³⁵

¹³³ ICTR-99-52-1323/1, 83–117 and 257–85

¹³⁴ Several interviewees noted how the early indictments contained a much wider range of charges, some of which were seen as being excessive (which was also viewed as being counterproductive to the legal goals of the case). Deputy Appeals Chief (2015).; and Senior ICTR Appeals Attorney 2 – (Arusha, Tanzania: June, 2015).

¹³⁵ See, for example, CONTRA001233, 22.

Finally, it was apparent that during the early trials the prosecution were concerned with how their actions could impact the regions affected by the violence being prosecuted. Robert Prosper, the lead prosecutor during *Akayesu*, for instance, decided to deliver the *Akayesu* verdict to Taba personally, to make sure that the population knew what had happened and understood why the outcome was as it was.¹³⁶ This, combined with the above, shows that the ICTR seemingly marked a departure from the more reductionist approach taken by the *Nuremberg* prosecutors.¹³⁷

Over time, however, the prosecution's approach seemed to change. In *Gatete*, whilst the prosecution had initially pursued charges relating to Gatete's (very substantial) crimes committed pre-1994,¹³⁸ a considerable number of these allegations were removed from the indictment when the prosecution amended it prior to the trial, and the prosecution then opted not to lead any substantive evidence of pre-1994 events during the trial.¹³⁹ This was despite the prosecution having successfully rebutted the defence's attempts to exclude evidence pertaining to pre-1994 crimes.¹⁴⁰ Indeed, the prosecution appeared to prosecute the *Gatete* trial in a manner that was driven by a concern with making it as quick and efficient as possible, rather than with ensuring that it produced a holistic account of the violence.¹⁴¹ As

¹³⁶ Victor Peskin, 'Courting Rwanda: The Promises and Pitfalls of the ICTR Outreach Programme', *Journal of International Criminal Justice* 3:4 (2005), 955.

¹³⁷ See Intro., n. 15.

¹³⁸ ICTR-00-61, ICTR-00-61-0166/1, *Gatete – the Pre-Defence Brief of Jean-Baptiste Gatete*, 29/01/2010, 8.

¹³⁹ ICTR-00-61-0088, 7; ICTR-00-61-0166/1, 8. A number of interviewees also noted that the indictments shifted over time, from including a broad (and sometimes chaotic) spread of charges to being more tightly focused around a smaller number of charges and events. Appeals Attorney 2 (2015); and Deputy Appeals Chief (2015).

¹⁴⁰ ICTR-00-61, ICTR-00-61-0025, *Gatete – Defence Preliminary Motions, Under Rule 72 of the Rules of Procedure and Evidence*, 12/04/2003, 5–6; ICTR-00-61-010; ICTR-99-46-0072, 15; ICTR-00-61, ICTR-00-61-0022, *Gatete – Prosecutor's Response to the Defense Preliminary Motion Challenging Defects in the form of the indictment Pursuant to Rule 72*, 09/05/2003, 6; and ICTR-00-61-0029, 3.

¹⁴¹ ICTR-00-61-0025, 5; ICTR-00-61-0022, 5; ICTR-00-61-0029, 3; ICTR-00-61, ICTR-00-61-0069, *Gatete – Defence Preliminary Motion Alleging Defects in the form of the Amended Indictment*, 22/5/2009, 6; ICTR-00-61, ICTR-00-61-0073, *Gatete – Decision on Defence Motion Concerning Defects in the Amended indictment*, 03/07/2009, 7; and ICTR-00-61, ICTR-00-61-0074/1, *Gatete – the Prosecutor's Submission*

discussed in Chapter Six, this was part of what was a more general shift in the prosecution's priorities over time, which saw the prosecution become increasingly concerned with questions of efficiency and economy in a way that also influenced their trial strategy.

This also effected how the prosecution used the witnesses during the trials, as over time they were offered less scope within which to testify and were used in an increasingly more 'utilitarian' manner. Compared with *Akayesu*, in *Gatete* the witnesses were asked shorter and more targeted questions during the trial, and the prosecution, along with the judges and the defence, exerted more control over the proceedings.¹⁴² Gone were the broader questions, featured during *Akayesu*, that probed the witnesses' backgrounds and their experiences in the lead up to the violence; instead, questions immediately directed the witness to the crimes charged to the accused in the indictment.¹⁴³ The prosecution even interjected during *their own witnesses' testimony* in order to bring it back to order. During *Gatete*, even after what appears to be a relatively succinct answer the prosecution reminded witness BBJ to be as quick and succinct in their response as possible.

Prosecution: And do you know whether Jean-Baptiste Gatete knew you?

Witness BBJ: Yes, he knows me. He knows me very well.

Prosecution: Right. Now, back to April 1994, subsequent to the death of President Habyarimana on the 6th of April, did you ever see Gatete thereafter?

Witness: I saw Gatete in Nyagasambu that was in the month of May at 9 p.m. It was at night.

Prosecution: Witness, just try and be brief in your answers and if I need explanation I will ask follow up questions. And the question was: Whether or not you saw Gatete in the month of April subsequent to the death of President Habyarimana? And all I wanted was a yes or no.

Witness: Yes.

Complying with the Decision on Defence Motion Concerning Defects in the Amended indictment Dated 3 July 2009, 07/07/2009.

¹⁴² A particularly good example of this new style of questioning can be seen in the examination-in-chief of Witness BBJ during *Gatete*. TRA005459, 14–30. See also the description of *Gatete* in the Appendix.

¹⁴³ See the testimony of Witness NN as an example of this. CONTRA001227.

Prosecution: Now, the next question is: Do you recall how many times you saw Gatete in the month of April 1994 after the 6th of April?

Witness: I saw him six times.

Prosecution: Thank you, Witness.¹⁴⁴

Whilst, throughout, the core function of the prosecution was to secure verdicts against the accused, over time the additional ‘goals’ that had been added now appeared to fall by the wayside.¹⁴⁵ Towards the end of the Tribunal there did seem to be an awareness of the shortcomings of this narrow focus on the law and a number of projects were developed, including the GSP, mentioned in the Introduction, to try to broaden the focus once more. However, these ventures appeared to be driven by individual members of the OTP rather than something that concerned the institution as a whole. Indeed, a lack of institutional support has meant that the GSP remains incomplete, and it now, with the close of the Tribunal, seems hard to see how or if this will ever be brought to its conclusion. Overall, as time went on, the OTP was simply not focused on broader ‘extrajudicial’ outputs.¹⁴⁶ As a former member of the OTP noted, as their strategy became more focused, they stopped trying to construct ‘fluffy histories’.¹⁴⁷ As such, it is very clear that over time the prosecution moved *away* from a broader understanding of its role and purpose and became more narrowly fixated on the legal matters at hand.¹⁴⁸ What is also clear is that in doing so the prosecution changed both the *accounts* of violence that it was producing, as these arguably became ‘thinner’ and more direct, and also *the function and purpose* behind these accounts as these become more overtly legal documents.

¹⁴⁴ TRA005459, 15. See also TRA005491/2, 81.

¹⁴⁵ Head of Appeals (2015).

¹⁴⁶ Senior Member of ICTR Office of the Prosecutor – (Arusha, Tanzania: June, 2015).

¹⁴⁷ Interview with Former OTP staff, (Arusha, Tanzania: June 2015).

¹⁴⁸ Head of Appeals (2015).

Conclusion

This chapter has demonstrated that numerous factors came to shape the way in which the prosecution constructed their accounts of violence. Whilst, as the first section demonstrated, law played a significant role, as it defined the parameters within which the prosecution could construct their cases and also influenced the way in which it described the actors that populated these narratives, law alone is insufficient to explain this process. Rather, as was demonstrated in the second section, non-legal discourses—such as gender—and the prosecution's extra-judicial goals all came to influence which accounts of violence were constructed. Combined, what these begins to show is the effects of what I have termed 'the conditions of truth', the conditions that, in line with Foucault's idea of the archive and archaeology, must be met by a statement within the courtroom for it to possibly be accepted as a truth and allowed to contribute towards the archive. What was also important here was the way in which gender and ethnicity came to ultimately influence the *legal* understanding of the crimes that had taken place and acted as markers that demonstrated that a crime had occurred, showing the way in which the relationship between different strands of discourses working within the apparatus came to shape the conditions of truth.

This chapter has also demonstrated the compatibility, at moments, of the prosecution's legal and extra-judicial goals, such as presenting a broader narrative of the violence in Rwanda. It should be noted, however, that the prosecution's concern with 'doing more' than producing a judgement in these early years was not necessarily replicated across all of the Tribunal's actors. Whilst the defences' and judges' approach will be dealt with in the subsequent chapters, of note here was the position adopted in the registry, which, in contrast to the

prosecution's concern with producing a broad account of violence, seemed defined by a *lack* of consideration of the extra-judicial value of the archive. The registry throughout these early years was focused so intensively on supporting the trials legally, that little thought went into considering how these (historically significant) records produced during the trials were to be stored for posterity.¹⁴⁹ This meant there was no archival management policy in place for the first decade of the Tribunal's existence,¹⁵⁰ which left the records for many of the early trials in disarray. This has had a lasting effect on the accessibility of certain records within the archive where it remains difficult to access full case files in many instances. This, I believe, reflects a lack of clarity within the Tribunal as a whole during the early years as to what its purpose and function was, as discussed in Chapter One, and indeed what it could and *should* achieve.

Overtime, moreover, further tensions appeared to emerge between the different goals and priorities of the prosecution. For instance, the legal and historical needs of the prosecution seemed to overlap in the early years, while towards the end of the Tribunal they appeared to come into tension with each other: but why? Why was it that the prosecution shifted its priorities over time? There was also the sense that the witnesses' narratives were highly framed and that this was, in fact, required in order for them to powerfully contribute towards the courts legal findings. The question is, however, did this mean that the interests of the witnesses and of the prosecution converged? Or did the way in which the prosecution framed these accounts mean—as scholars like Dembour and Haslem suggest—that witnesses were prevented from telling stories that they might otherwise have told? To what extent, then, did

¹⁴⁹ Member of ICTR Archives Unit – (Arusha, Tanzania: June, 2015).

¹⁵⁰ *Ibid.*

the prosecution and witnesses co-construct the archive *together*? The following chapters address these questions.

Chapter Three: Witnessing Genocide

Introduction

This chapter focuses on the role that prosecution witnesses played during each of the three featured trials. It builds on the findings of the Chapter Two, which showed how the prosecution attempted to lead the witnesses in particular ways to tell particular stories, looking more closely at how the witnesses responded to, worked with, and resisted the prosecutions attempts to cajole and constrain their accounts. In doing so it re-examines the idea of witness passivity during these processes.

The chapter traces the witnesses' interactions with the prosecution over the course of the trial. It begins by looking at the investigation stage and the role played by witnesses in constructing the prosecution's framework before turning to the trial stage. This journey shows that the frameworks that emerged during each trial were actively constructed, and contested, by the witnesses. In fact, even during the trials, the witnesses had a role in (re)shaping not only the content and meaning of the trial's narratives of violence, but also *how the court approached evidence*. The chapter also explores the RPF's influence on the archive, particularly through their interventions that appeared motivated by a desire to protect the interests of victims, which captures another (albeit indirect) way that those that suffered as a result of the genocide influenced how the archive was constructed. As such, this chapter explores the extent to which the archive was constructed in the image of the witnesses and the RPF, and whether these interests were in harmony with each other and those of the Tribunal.

Witnesses and the Courtroom

Investigations and Indictments

Scholars, such as Dembour, Haslem, and Franke, contend that during a trial the prosecution force particular narratives on the witnesses.¹ However, this sits in tension with the important role played by witnesses in establishing those narrative frameworks in the first place. As Eltringham suggests, there is a need to consider the pre-trial function of the witnesses in generating the type of narrative structures considered in the previous chapter and in turn to see that witnesses' in-trial testimony was essentially a re-performance of a script that had been (to greater or lesser extents) *co-produced*.² It was first and foremost through the voices of the witnesses that the prosecution constructed their cases against the accused and witnesses played an important role in identifying what happened in each locality and who was responsible.³ These initial acts of testimony affected not only how individual trial narratives were constructed, but also shaped the prosecution's understanding of the violence overall.⁴ This became apparent during *Cyangugu* when the prosecution questioned one of their investigators:

Prosecution: Now, can you tell this Court any common denominator you have established in the course of your inquiries as an investigator with the OTP?

Witness [OTP investigator]: It gradually, perhaps, it goes to the background here, when we originally started doing investigations in various areas, we focused on geographical locations. So a team would go to Cyangugu, a team would go to Kibuye, a team may go to Butare, Gisenyi and so on. And those teams would simply

¹ McEvoy and McConnachie, 'Victims and Transitional Justice' (see Chap. One, n. 46).

² Eltringham, 'We Are Not a Truth-commission' (see Intro., n. 28), 65–7.

³ Senior Investigator – ICTR Office of the Prosecutor (Arusha, Tanzania: June, 2015).

⁴ *Prosecutor v. André Ntagerura*, Case No. ICTR-96-10 (hereafter ICTR-96-10), ICTR-96-10A-0272, *Ntagerura – Prosecutor Request for Leave to File an Amended Indictment*, 02/12/1999, 11–2.

take statements from witnesses, from victims and survivors as to what happened. It gradually emerged that there was, there was a pattern in the sense that you had a connection, as we have here, between the Government member, Mr. Ntagerura, and between the prefet, Mr. Bagambiki, between the military commander [...]. And [subsequent to follow-up investigations and], obviously, once our legal advisers had a chance to see these various connections, [this led to the] kind of situation, as we have now, where various people were indicted together.⁵

This model of genocide governance, whereby national was connected to local and the various organs of state were brought together, became the prosecution's framework that was deployed at each trial, as discussed in the previous chapter.

This relationship between the witnesses and the OTP in the co-construction of a trial's narratives was also evidenced in the apparent 'script' that was performed during the trials. This was most clearly seen in the counsels' interjections when a witness skipped ahead of a crucial aspect of their account, essentially directing them to 'get their lines right' and tell the full story:

Witness: [...] after he told me that people began to be killed here in this courtyard.

Prosecution: Before we get to the killing, after he said this to you did Akayesu call for Etienne?

Witness: Yes. He called that person.⁶

This is not, however, to claim that the witnesses' influence within the initial investigations was boundless. As Campbell has argued, the potential of a witness's testimony was always already limited by the legal frameworks at play and the need for these testimonies to speak of a crime that was recognised as such by the Tribunal under its mandate.⁷ The investigators, then, did not enter these encounters blindly, but were influenced by prosecution strategies

⁵ *Prosecutor v. André Ntagerura et al.*, Case No. ICTR-99-46 (hereafter ICTR-99-46), TRA000209, [Cyangugu] – Ntagerura et al – Redacted Transcript of 20/09/2000, 20/09/2000, 94–6.

⁶ *Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4 (hereafter ICTR-96-4), CONTRA001176, *Akayesu* – Transcript of 10/1/1997, 10/01/1997, 51. For another example see, ICTR-99-46, TRA000131/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 21/11/2000, 21/11/2000, 99.

⁷ Campbell, 'The Laws of Memory' (see Intro., n. 33), 251–3.

that were structured by the Tribunal's statute and also by information about the violence that had been provided by reports from the UN—such as those by the Expert Commission and the Special Rapporteur—Human Rights organisations, and the RPF.⁸ Combined, this gave the investigators an indication of what had occurred and what type of evidence they should be looking for, and consequently it also excluded some evidence from the outset.⁹ For instance, the temporal jurisdiction meant that there were to be no investigations into (and therefore no accounts of) the RPF's violations of international law in Rwanda that occurred after 1994.

Evidence of the effects of these constraints became particularly apparent at moments during the trials when the prosecution defended their witnesses against the defence's accusations that their in-court testimony was different from that contained in their witness statement. Witnesses often responded that they had not been asked questions about certain matters by the investigators but were using the opportunity of a court appearance to add to their account.¹⁰ During *Cyangugu*, in order to protect against these allegations, the prosecution called one of their investigators as a witness. The investigator explained that whereas Witness LAM had mentioned Bagambiki during the trial, he would not have done so during the initial investigations:

In this case it is notable that the witness statement was taken in 1997 when the Prosecutor was investigating military involvement in the genocide in Cyangugu, and it was taken before Bagambiki was arrested.¹¹

⁸ S/1994/1125, *Preliminary Report of the independent Commission of Experts Established in Accordance with Security Council Resolution 935 (1994)*, 04/10/1994, 9–17; E/CN.4/1995/7, *Question of the Violation of Human Rights and Fundamental Freedoms in any Part of the World, with Particular Reference to Colonial and Other Dependent Countries and Territories: Report on the Situation of Human Rights in Rwanda Submitted by Mr. R. Dègni-Ségué, Special Rapporteur of the Commission on Human Rights, Under Paragraph 20 of Commission Resolution E/CN.4/S-3/1 of 25 May 1994*, 28/06/1994, 7–8; S/PV.3400, 3400th Meeting, 01/07/1994, 4–6, and 8–10; and Senior Investigator (2015).

⁹ Appeals Attorney 2 (2015).

¹⁰ ICTR-99-46, TRA000217/1, [*Cyangugu*] – *Ntagerura et al* – Redacted Transcript of 24/10/2000, 24/10/2000, 16 and 38; and ICTR-99-46, TRA000438/1, [*Cyangugu*] – *Ntagerura et al* – Redacted Transcript of 21/02/2001, 21/02/2001, 44.

¹¹ ICTR-99-46, TRA000409/2, [*Cyangugu*] – *Ntagerura et al* – Redacted Transcript of 07/05/2001, 07/05/2001, 56.

On one occasion the defence even called a prosecution investigator as a witness in order to put questions about a shift in a prosecution witness's testimony. Similarly, the investigator responded:

I found a name which suggested to me -- and this was LAB. And I thought if I spoke to him -- I had gone actually to find out about what had happened at the stadium. And so my intention was to find prisoners in the prison, talk to them and see whether there was any good information I could get about the stadium. So, before I left Kigali, I had this name at the back of my mind and, therefore, I wanted to just find out. So, I --when I was sure I had gotten this person, I began to talk with him and *to check whether I could get anything about what I wanted. But I realised that this person, LAB, was only talking about events of the factory which I was not interested in. And, therefore, at a certain point, I halted the interview* (emphasis added).¹²

This clearly demonstrates that the investigations limited what a witness would testify to and, moreover, that a witness's testimony would change *as the prosecution's investigation strategy changed*.¹³

Another important issue in this respect was the general quality of the initial investigations.¹⁴ Investigations were often poorly conducted with insufficient awareness of the: crimes that had been committed; cultural specificity or the historical background of Rwanda; applicable law; nor with the sensitivity that was warranted.¹⁵ As has been noted, this undoubtedly

¹² ICTR-99-46, TRA001616/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 26/03/2002, 26/03/2002, 18–9.

¹³ This encounter is also referring to a subsequent investigation phase where the Tribunal shifted from investigating the crimes regionally in order to focus on institutions and then particular individuals. As this suggests, over time the space within which the witnesses could influence the investigations decreased. Senior Investigator (2015).

¹⁴ Deputy Appeals Chief (2015).

¹⁵ E/CN.4/1998/54/Add.1, *Further Promotion and Encouragement of Human Rights and Fundamental Freedoms, including the Question of the Programme and Methods of Work of the Commission Alternative Approaches and Ways and Means within the United Nations System for Improving the Effective Enjoyment of Human Rights and Fundamental Freedoms Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences, Ms. Radhika Coomaraswamy Addendum Report of the Mission to Rwanda on the Issues of Violence Against Women in Situations of Armed Conflict*, 04/02/1998, 12–8; and A/51/789, *Financing of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States Between 1 January and 31 December 1994: Report of the Secretary-General on the Activities of the office of internal Oversight Services*, 06/02/1997, 2–3 and 17–20. 'In addition, legal officers assigned to the

affected the quality of some of the pre-trial statements, at least in terms of the legal value of these statements.¹⁶

From the perspective of the archive, however, it is difficult to assess how this impacted on the witnesses' ability to determine what information was produced due to the inaccessible nature of the witnesses' pre-trial statements. On the one hand it seems that the insensitivity of the prosecution's approach might have made witnesses feel uncomfortable in disclosing information to the investigators, and this was certainly true of witnesses testifying to the occurrence of sexual violence once the Tribunal took steps to investigate this crime.¹⁷ This approach also meant that some witnesses refused to cooperate with the OTP.¹⁸ A witness from Cyangugu noted their anger at the investigation team's behaviour as they approached them whilst they were burying the dead: 'We were preparing to bury our loved ones, and [the investigators] were taking photographs without showing any respect for the dead. We finally showed them how furious we were.'¹⁹ On the other hand the investigators' inexperience might have afforded the witnesses greater space to influence the process. Indeed, when these investigations are criticised it is often because they produced evidence that lacked the rigour and specificity required to easily defend their credibility in court.²⁰ Whilst legally of less value, from the perspective of the archive it would appear as though there were at least some

investigation teams, with one exception, had little or no experience in criminal investigations; yet they were charged with the task of advising the investigators on how to proceed to collect sufficient evidence, as well as drafting and defending the indictments. This process has been corrected by the current Prosecutor. A rigorous review process for all indictments in both Tribunals is now in effect.' (p. 18). It needs to be born in mind that this was *three years* after the investigations had begun. Senior Appeals Attorney (2015). See also Appeals Attorney – ICTR Office of the Prosecutor (Arusha, Tanzania: June, 2015); Appeals Attorney 2 (2015); Head of Appeals (2015); and Senior Member of ICTR Office of the Prosecutor (2015).

¹⁶ Head of Appeals (2015); Senior Appeals Attorney (2015).

¹⁷ African Rights and Redress, *Survivors and Post-Genocide Justice in Rwanda: Their Experiences, Perspectives and Hopes* (November 2008), (see Internet Materials list), 64. This is *not* to blame the witnesses. These types of comments often get too close to suggesting that this was the *witnesses'* fault for not saying what happened. This is, rather, to criticise, once again, the investigation's failure to approach this in a way that *enabled* the witnesses to testify to the crimes they suffered in full.

¹⁸ Senior Appeals Attorney (2015).

¹⁹ *Supra* note 17, 58. Another witness from Cyangugu specifically noted the poor quality of the investigations and the lack of faith this meant they had on the Tribunal. (p. 64 and p. 67).

²⁰ Senior Appeals Attorney (2015); Appeals Attorney 2 (2015); and Head of Appeals (2015).

instances when witnesses were given *too much* scope to tell their stories and therefore to determine the content of the archive.²¹ Moreover, as will be explored more below, where investigations limited the scope of testimony prior to the trial, this did not mean that the witnesses could not expand upon this when on the witness stand. Consequently, it is important to retain the notion of *co*-construction, with the witnesses working within the rules of the apparatus in order to produce the narrative frameworks that governed the trials.

Two important examples further demonstrate the witnesses' significant role in influencing the OTP's investigation strategy and therefore what frameworks were operating within the trials. The first was the influence of two witnesses in *Akayesu* who brought the widespread and systematic nature of rape during the genocide to the Tribunal's attention, which, along with pressure from external actors, resulted in the creation of a special sexual violence investigative unit and a new investigative policy that (at least on the surface) meant that sexual violence crimes could become integrated into the OTP's cases.²² Second, changes within Rwanda at around the turn of the century, including the advent of *Gacaca* and the increased pace of domestic trials, meant that perpetrators became increasingly willing to act as prosecution witnesses at the ICTR because they had already been legally processed domestically and so no longer faced the danger of potentially incriminating themselves whilst testifying to crimes they had participated in. This also resulted in a shift in the prosecution's investigation strategy as they began to rely on 'insider' or 'accomplice' witnesses, rather than victim witnesses, which fundamentally altered what types of accounts were created, and from which vantage point these were told, as the episodes of violence would now be narrated from

²¹ Head of Appeals (2015); and Deputy Appeals Chief (2015).

²² E/CN.4/1998/54/Add.1, 12–3; ICTR–96–10, ICTR–96–10A–0272, *Ntagerura – Prosecutor Request for Leave to File an Amended Indictment*, 02/12/1999, 12; and A/53/429, *Report of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994*, 23/09/1998, 9–10.

the position of the attackers.²³ This additionally meant that the prosecution could connect the leaders and organisers of the genocide to the acts of violence committed on the ground,²⁴ which also resulted in an increased use of superior responsibility (6(3)) charges at the ICTR.²⁵

As such, whilst witnesses played within the rules of the courtroom, they nonetheless played a significant role in the pre-trial process, where they influenced both which frameworks drawn on at each trial and the OTP's strategy as a whole. Whilst this already brings the idea of witness passivity into doubt, even stronger evidence of the witnesses' agency materialised during the trial stage itself.

Contesting the Framework

Trials are often presented as processes that silence witnesses, due to a clash of interests between the witnesses desire to tell *their* story and the courts need for a legal story.²⁶ This sentiment was also expressed to me in a number of the interviews I conducted, where there was a sense that in some instances there was a tension between the court's and witnesses'

²³ Senior Investigator (2015). Other external factors that affected the investigations included the ongoing conflict in Zaire which meant that some regions were considered too dangerous for investigations to occur. ICTR-96-10, ICTR-96-10A-0006, *Ntagerura – Request for Extension of Detention*, 18/06/1996, 6; ICTR-97-36, ICTR-97-36-00189, *Bagambiki – Audio Recording of 08/09/97 – AM*, 08/09/1997; and ICTR-99-46, TRA000434/2, *[Cyangugu] – Ntagerura et al – Redacted Transcript of 14/02/2001*, 14/02/2001, 30.

²⁴ A similar impact was seen with Kambanda's and Serushago's guilty plea testimony, which provided firm evidence of the existence of a conspiracy. ICTR-99-46-0001, *Prosecutor's Motion for Joinder of the Accused (Ntagerura, ICTR-96-10A-T0, Bagambiki ICTR-97-36-T, Imanishimwe ICTR-97-36-I, and Munyakazi ICTR-97-36-I)*, 02/04/1999, 3.

²⁵ Senior Investigator (2015). The potential impact of this on the prosecution's trial strategy was seen in the changes that the prosecution made to its witness list in *Cyangugu*. When the trial began in 2001, of 41 witnesses called only ten had been included in the initial witness list submitted in 1997. Tellingly, the majority of those called during the trial were 'insider witnesses' who had not been accessible during the initial investigations. ICTR-99-46, TRA002960, *[Cyangugu] – Ntagerura et al – Redacted Transcript of 06/02/2006 – Appeals Hearing*, 06/02/2006, 73–4.

²⁶ Dixon and Tenove, 'International Criminal Justice' (see Intro., n. 43).

needs.²⁷ Whilst I am not discounting the importance of this (as will be discussed shortly), when analysing the trial transcripts, it became apparent—particularly with the *Akayesu* transcripts—that, even after the trials began, the witnesses remained able to contest and expand the trial frameworks produced in the build-up to the trials. For example, during *Akayesu*, whilst testifying to other crimes contained within the indictment, two witnesses, Witness J and Witness H, testified to the occurrence of rape within the Taba commune. Witness J testified that her six-year-old child had been raped, whilst Witness H testified how she herself had been raped.²⁸ These narratives sat uneasily within the courtroom at this point of the trial due to absence of sexual violence charges in the indictment. This meant that the defence had not been pre-warned of the witnesses’ incriminating testimony, which consequently undermined their right to a fair trial. However, the testimony along with an *amicus curie* from a human rights organisation, and the presence of Judge Pillay on the bench—a particularly attentive judge to these issues²⁹—led the prosecution to introduce six new counts relating to sexual violence in an amended indictment.³⁰ The judges, despite the fact that the prosecution’s case had effectively come to a close, accepted this new indictment and as a result a further five witnesses were called to testify, and the chambers consequently found that rape had occurred in Taba, and that it was part of the genocide.³¹

The ramifications of this went beyond the trial itself as it opened up a cleared pathway for sexual violence charges to be included in other cases and for other witnesses to testify to its

²⁷ Member of the ICTR Victim and Witness Support Section – (Arusha, Tanzania: June, 2015); and Senior Reviser – ICTR Registry (Arusha, Tanzania: June, 2015).

²⁸ ICTR-96-4, CONTRA001186, *Akayesu* – Transcript of 27/1/1997, 27/01/1997, 101–2; and ICTR-96-4, CONTRA001195, *Akayesu* – Transcript of 6/3/1997, 06/03/1997, 106–7.

²⁹ Appeals Judge (2016).

³⁰ ICTR-96-4, ICTR-96-4-0183, *Akayesu* – Amicus Brief Respecting Amendment of the Indictment and Supplementation of the Evidence to Ensure the Prosecution of Rape and Other Sexual Violence within the Competence of the Tribunal, 28/05/1997; Moore, ‘the Story a UN Court Didn’t want Three Rape Survivors to Tell’; and ICTR-96-4, CONTRA001212, *Akayesu* – Transcript of 17/6/1997 – Motion, 17/06/1997, 8–12.

³¹ Estelle Dehon (discussant), *ICTR Legacy Symposium*.

occurrence. As noted above, soon after Witness H's and Witness J's testimonies, a special investigation unit tasked solely with investigating sexual violence crimes was created.³² It must be stressed, however, that this testimony still maintained a *legal* quality and value. Even here the shift was only possible because Witnesses J and H captured an incident that was recognisable as a crime and could then be linked to the accused. It was notable that one of the prosecution's explanations for why these charges were not brought about earlier was that they did not (until Witnesses H's and J's testimony) have sufficient evidence to link the perpetration of sexual violence crimes to Akayesu.³³ Again, then, the idea of co-construction becomes important.

Further evidence of the witnesses' ability to (re)shape the prosecution's framework was seen in other instances when the witness testimony exceeded the boundaries of the indictment. This often occurred *despite* the defence's attempts to prevent these accounts from entering the courtroom. The defence's objections failed when the judges found that whilst the witnesses' allegations did not *directly* speak to one of the charges in the indictment, they were related to it sufficiently not to endanger the defendants' rights to a fair trial. For instance, on one occasion during *Cyangugu* when the defence attempted to exclude evidence about a weapons-drop that Bagambiki and Ntagerura participated in, the judges responded:

Mr President: Mr. Henry [defence counsel for Ntagerura], isn't there a distinction between a situation where there is no charge in the indictment and facts to be led to establish that charge, as against a situation where there is a charge in the indictment, and then facts to be led to establish that charge?³⁴

And subsequently:

³²Also, importantly, Witness J noted in her testimony that she was never asked about the rape of her daughter. CONTRA001186, 102; ICTR-96-10A-0272, 12; A/53/429; and E/CN.4/1998/54/Add.1.

³³ Senior Investigator (2015).

³⁴ ICTR-99-46, TRA000404/1, [*Cyangugu*] – *Ntagerura et al* – *Redacted Transcript of 11/09/2001*, 11/09/2001, 13.

Mr President: In paragraph 13 of the indictment there is some reference to arms and ammunition being distributed.

Granted that this is not in *Cyangugu* proper with regard to the facts, but as part of the process of continuing acts. And in those circumstances we will overrule the objection, and we'll allow the evidence to be led.³⁵

Similarly, the defence during *Cyangugu* and *Gatete* also tried to exclude witnesses' evidence on the grounds that it contained information that exceeded the parameters of their pre-trial statements and therefore violated the rights of the defendant. On a number of occasions, however, these contentions failed, and the judges allowed the evidence to be heard. When, for example, the defence objected repeatedly to the Witness NL's unplanned testimony that he had witnessed a meeting in 1993, the judges responded variously:

Mr President: I would like to recall that what your Chamber several times explained to the Defence; that is, a witness statement cannot contain everything, no rule of procedure obliges an investigation to make sure that the witness says everything, because no witness is capable of saying everything that he has to say.³⁶

[....]

Mr President: In addition to that, we have Rule 89, General Provisions, which says that 'The Chamber may admit any relevant evidence which it deems to have some probative value'.³⁷

Significantly the judges not only ruled that evidence was permissible under the current jurisprudence, but also utilised the broader provisions of Rule 89(C)—that 'a Chamber may admit any relevant evidence which it deems to have probative value'—in order to bring the matter to a complete close, suggesting that the chambers' were, at least at this point, disposed

³⁵ *Ibid.*, 18–9. For other examples of where evidence was led despite it being claimed by the defence that the acts were not explicitly contained within the indictment see: ICTR–99–46, TRA000750/01, [*Cyangugu*] – *Ntagerura et al – Redacted Transcript of 06/06/2001*, 06/06/2001, 79–85; TRA000404/01, 11/09/2001, 7–20; and ICTR–99–46, TRA000324/2, [*Cyangugu*] – *Ntagerura et al – Redacted Transcript of 04/03/2002 – Motion*, 04/03/2002, 69–70.

³⁶ TRA000438/1, 27.

³⁷ *Ibid.*, 31. In another particularly clear example of this a witness who was only scheduled to testify to an exhumation ended up testifying to a story about the extraction of his father from Karamapaka stadium at the orders of Bagambiki, noting that this was the last time that he had seen him before seeing his body exhumed. What is more, unlike the examples detailed below, this evidence was clearly led by the prosecution. ICTR–99–46, TRA000533/1, [*Cyangugu*] – *Ntagerura et al – Redacted Transcript of 14/05/2001*, 14/05/2001, 69–73.

towards letting in as much of the witnesses' evidence as possible.³⁸ This also shows that there was an accepted untameable quality about witness testimony, which meant that more space had to be provided for witnesses to testify during the trial, and that witnesses were not to be restricted to the evidence provided during the investigations. This implicitly underlined a similar argument utilised by the prosecution in order to rebut the defences' objection over this issue during *Gatete*:

Prosecution: Madam President, Your Honours. My response is, this is information which has just come out in evidence. We did not—prior to today—know about this [...].

Judge Muthoga: Counsel for the Prosecution has said it is not something she planned to put to you so that she could give you notice. She didn't know it herself [...]. It has come spontaneously from the witness.³⁹

Even when the defence intervened again to argue that the testimony was 'prejudicial' the judges responded:

Mr President: You can't stop the witness. You can't prevent the witness from giving answers.

[...]

Witness: I must say this. When I was interviewed, I did not provide these details. I answered the questions as they were put to me and as they are being put to me here before the Chamber.⁴⁰

As noted above, the courtroom could provide witnesses with the chance to tell aspects of their stories that they had previously been prevented from declaring. This was often the case because the investigative priorities, as discussed above, restrained what they were asked

³⁸ See also *Prosecutor v. Jean Baptiste Gatete*, Case No. ICTR-00-61 (hereafter ICTR-00-61), ICTR-00-61, TRA001643/1, *Gatete – Redacted Transcript of 20/10/2009*, 20/10/2009, 15–6.

³⁹ ICTR-00-61, TRA005458, *Gatete – Redacted Transcript of 22/10/2009*, 22/10/2009, 39–40. 'Mr President: Madam Poulain, the Court can't prevent the witness giving the answer. He cannot be restricted to answer the question in a particular way or not to answer in a particular way. This, again, is something which came from the witness. And as to the distribution of weapons and guns, it is in the — it is an allegation against the Accused in the indictment. But, anyway, while we hear the evidence of this witness we will keep your objection in our minds.' ICTR-00-61, TRA005461, *Gatete – Redacted Transcript of 13/11/2009*, 13/11/2009, 15. See also, CONTRA018137, *Gatete – Redacted Transcript 04/11/2009*, 04/11/2009, 42; and ICTR-00-61, TRA005507/2, *Gatete – Redacted Transcript of 10/11/2009*, 10/11/2009, 56.

⁴⁰ TRA005458, 43.

about during pre-trial statements and also because time and resource constraints meant that these initial exchanges were often relatively brief. As such, what was a pre-trial statement that might only consist of a handful of notes (which might be either verbatim testimony or a summary of the statement) could turn into a lengthy testimony once the witness took to the stand. One former investigator noted an instance when a pre-trial statement of three pages became an in-court testimony that took up a whole trial session (about fifteen days).⁴¹ The ability for the witnesses to shape the contours of the court's narrative did not stop, then, at the pre-trial stage but very much continued into (and sometimes was even greater) during the trial.

Meaning

This section will look at how (and reasons why) witnesses also maintained a degree of control over the *meaning* of the violence within their testimony as they pushed back against both the apparatus' construction of particular ideas about victimhood and perpetratorhood and its attempts to extract what was *generalisable* about their experience, which is something that Akhavan argues is fundamental to how law functions.⁴²

Within the witnesses' testimonies, the narrative tropes of resistance and survival, for instance, pushed back against the notion of the inherent passivity of victimhood. This appears first of all in the accounts that documented the victims' resistance against the attackers in those

⁴¹ Senior Investigator (2015).

⁴² Akhavan, *Reducing Genocide to Law* (see Intro., n. 71), 174.

places they had sought refuge.⁴³ This resistance was often only overcome after the local authorities intervened with reinforcements for attackers, as occurred in Mukarange Parish, Kibungo, when Gatete provided grenades to the attackers, and Nyange Parish, Kibuye, where local officials resorted to destroying the church completely with the refugees inside after they determined this was the only way to overcome the refugees' resistance.⁴⁴ Resistance came in other forms also: during *Akayesu* Witness N testified how she continued to withhold information about the location of Alexia (her daughter-in-law) despite Akayesu torturing her.⁴⁵ Despite having been beaten on multiple times, Witness N told Akayesu, 'if you continue hitting me with all the strength that it left in me I will bite you with my teeth.'⁴⁶ After this, Akayesu and the Interahamwe he was with stopped questioning her. These examples show that being a victim did not necessarily signify passivity.

The second manner in which narratives of survival and resistance materialised was in the symbolism attached to the act of testifying itself. By giving a voice to the victimised groups these acts of testimony defied the attempt to wipe out all traces of that particular group.⁴⁷ Here, moreover, the witnesses' testimony had the potential to produce the circumstances whereby an accused's action was seen as criminal and therefore punishable, and as such afforded them a chance to invert the power dynamics of the violence. A particularly powerful example of this was when the witnesses' testimony captured the accused's voice, such as Witness JJ's aforementioned evidence that Akayesu, having authorised the mass rape of

⁴³ ICTR-99-46, TRA001796/1, [*Cyangugu*] – *Ntagerura et al* – Redacted Transcript of 23/10/2002, 23/10/2002, 9–11; ICTR-99-46, TRA000122/01, [*Cyangugu*] – *Ntagerura et al* – Redacted Transcript of 09/10/2000, 09/10/2000, 13–34; and TRA005458, 46–8.

⁴⁴ ICTR-00-61, ICTR-00-61-0240/1, *Gatete* – *Judgement and Sentence*, 31/03/2011, 4, 9 and 90; and *Prosecutor v Grégoire Ndahimana*, Case No. ICTR-01-68, *Trial Judgement*, 30/12/2001, 143–53.

⁴⁵ ICTR-96-4, CONTRA001183, *Akayesu* – *Transcript of 15/1/1997*, 15/01/1997, 106–19.

⁴⁶ *Ibid.*, 115–6.

⁴⁷ Felman, 'Fire in the Archive', 50–1.

women at the bureau communal, uttered the words, ‘Never ask me again what a Tutsi tastes like.’⁴⁸

The inversion of the genocide’s power dynamics was particularly apparent during Witness N’s testimony in *Akayesu*. Importantly at this point in the trial the judges permitted Akayesu to personally cross-examine the witnesses whilst they rendered a decision on his request to change defence counsel for a second time. Here, Witness N was in no doubt of Akayesu’s responsibility for her suffering:

Mr President: As regards the death of these people, did you see this, did you witness their death, or did you hear that these people had been killed by Akayesu, or are you just deducing this based on the fact that they were taken away by Akayesu? There are three scenarios here.

The Witness: *Ask [Akayesu] where he took them. I maintain that he is the one who killed them. I will persist in saying that he is the one who killed them. I have not seen them since he took them away. (Emphasis added.)*⁴⁹

This tension peaked when Akayesu cross-examined Witness N directly:

Akayesu: You said that the only time Akayesu came to your house he killed and went back. Who did he kill?

The Witness: *You started by killing Ntereye, after that you killed his wife Alexia. In fact, you killed the entire Ntereye family on that same day. (Emphasis added.)*⁵⁰

The witness’s accusations were incessant, and every time she mentioned a crime or violent act she stated that ‘you’ (i.e., Akayesu) was responsible for it.⁵¹ This also challenged the

⁴⁸ ICTR-96-4, CONTRA001222, *Akayesu – Transcript of 23/10/1997*, 23/10/1997, 77. Another particularly good example of this was Witness C’s testimony that he had heard Akayesu say, ‘I do not think that what we are doing is proper. We are going to have to pay for this blood that is being shed.’ TRA001178, *Akayesu – Transcript of 14/1/1997*, 14/01/1997, 154.

Prosecution: You confirm that you did not see Akayesu kill?

Witness: That depends on what you call kill, because if Akayesu had wanted to, nobody would have been killed.

Prosecution: Well, I am asking you a question. Please answer the question the Tribunal is asking. Did you see Akayesu kill a person with his own hands? I want to be clear on this?

Witness: No, he had killed by orders.

ICTR-96-4, CONTRA001180, *Akayesu – Transcript of 22/1/1997*, 22/01/1997, 149.

⁴⁹ CONTRA001183, 132–3.

⁵⁰ ICTR-96-4, CONTRA001184, *Akayesu – Transcript of 16/1/1997*, 16/01/1997, 4.

notion that the courts produced generalised accounts of violence that were abstracted to the point of irrelevance for the witnesses; the witness here was very much aware of who they felt was responsible for what they experienced within their locality.

As this suggests, witnesses detailed specific episodes of violence that had fundamentally affected them and their lives, which defied any notion of a universal victim experience. For some of these witnesses the violence suffered and survived was worse than dying, or a disembodied moment of unimaginable trauma; for others, the inflicted injuries still affected their lives in the present; and for others still the final moments before a massacre were moments of religious reflection.⁵² It was even possible for the court to accept two distinct understandings of the *same episode of violence* by different witnesses. In the following examples witnesses variously described the refugees singing a death march as they were forced out of the church in order to be murdered as both a final act of resistance or of humiliation.

The Interahamwe got us out of the church. They asked the refugees to get out of the church. Some refugees were saying that we should accept to be killed inside the church whereas others had accepted to go out in order to be killed outside the church. So we linked hands and went out of the church singing the song, 'We Were Created to Go to Heaven'.⁵³

⁵¹ See the whole of this exchange: *Ibid.*, 4–52. Another example is:

Prosecution: And can you tell the Judges how you knew Jean-Baptiste Gatete?

Witness: I know him. I know him in particular, because during the war of 1994, he attacked us and exterminated members of our families. He attacked us in the churches where we had sought refuge and in other places. Many people were killed. So those are the circumstances in which I know him. I know him as a result of his acts.

ICTR-00-61, TRA005459, *Gatete – Redacted Transcript of 05/11/2009*, 05/11/2009, 14. See also, CONTRA018137, 49; and TRA005507/2, 60. See also CONTRA001176, 54; and CONTRA001178, 154.

⁵² 'Prosecution: [W]hat was going through your mind, Witness?

Witness: I cannot describe exactly what was going on in my mind. I thought I was going to die. But it was not just ordinary death, it was as if the hair was breaking loose on us. It was the end of the world to us.

ICTR-99-46, TRA000218/1, [*Cyangugu*] – *Ntagerura et al – Redacted Transcript of 25/10/2000*, 25/10/2000, 74. See also: CONTRA001183, 119; ICTR-00-61, TRA005158/1, *Gatete – Redacted Transcript of 17/03/2010*, 17/03/2010, 63; TRA001643/1, 23–4; and CONTRA001222, 59–62.

⁵³ ICTR-00-61, TRA005490/2, *Gatete – Redacted Transcript of 21/10/2009*, 21/10/2009, 56.

In another trial:

When I came back inside the church with my children, shortly thereafter, I believe it was around 10 a.m., I went near the altar, then I saw soldiers enter the church and people started going out. A soldier asked us to sing the funeral dirge which was titled 'We were created to go to heaven.' When we started singing that song, the soldiers made us get out of the church and brought us to the courtyard.⁵⁴

The witnesses' ability to retain a sense of the meaning of the violence was also shown through the important role that the local context played within the witnesses' description of what occurred, which again challenged the idea that these courts produced deontological accounts of violence that ignored the local specificity of the violence.⁵⁵ One way that the local was brought into testimony was through witnesses declaring that they had known the attackers prior to the genocide, with the personal and intimate nature of the violence strongly emphasised.

Prosecution: What was the composition of the attackers?

Witness: We were being attacked by Hutus, people that we knew, people who were our neighbours with whom we had been living up till that point.⁵⁶

Witness NN, for example, spoke of how the person that raped her told her just before assaulting her that whilst she had rejected him before the war she now could not, which captured both the locally situated nature of the violence and also the centrality of patriarchal structures in enabling this violence to take place.⁵⁷ In other instances prior encounters could lead to survival. During *Gatete* a witness recalled how, after regaining consciousness in a mass grave, an Interahamwe saw that she was alive, recognised her, and took her out of the pit to his home.⁵⁸ Witness PP noted how the persons that came to kill her stopped when an Interahamwe, Rafiki, recognised her as someone that had been kind to him in the past

⁵⁴ TRA005458, 5.

⁵⁵ Fink, 'Deontological Retributivism' (see Intro., n. 71).

⁵⁶ TRA000218/1, 62; CONTRA001222, 20; and ICTR-00-61, TRA005491/2, *Gatete – Redacted Transcript of 03/11/2009*, 03/11/2009, 16.

⁵⁷ ICTR-96-4, CONTRA001227, *Akayesu – Transcript of 3/11/1997*, 03/11/1997, 20.

⁵⁸ TRA005458, 8.

because she had given him a sandwich.⁵⁹ Nevertheless, Rafiki subsequently kept Witness NN captive for days on end during which time he repeatedly raped her.⁶⁰

As this also suggests, the witnesses' testimony also presented different understandings of what it meant to be a perpetrator during the genocide, as the above examples show that 'perpetrators' could also be 'saviours' and 'resisters'. This was especially the case after the prosecution turned to perpetrator witnesses in the early 2000s, which introduced the possibility that formerly concealed elements of the genocide (such as the planning of the violence) could come into view. This captured the myriad ways and reasons that people came to participate in the killing. There were acts of testimony that showed that witnesses participated out of a sense of obligation, noting the work-like nature of the violence,⁶¹ or that the violence was a service to the community.⁶² Elsewhere, witnesses described participating in the genocide as simply a way to make money.⁶³ Other witnesses suggested that violence committed as part of the genocide became something that *was legal*; its extremity became the 'new normal':

Prosecution: Mr. Witness, I'm still interested in this meeting with Félicien, when he gives you instructions to kill. When he told you that, you knew that killing was a crime; right?

Witness: I knew that killing was a crime, but after Habyarimana was killed, no one considered killing to be a crime. It is only later that I confessed to the crimes that I committed and asked for forgiveness. But at the beginning of the events, I did not consider killing to be a crime.

Prosecution: And you considered that killing was not a crime because you were told by the authorities to go and kill.

Witness: Yes. That is correct.

⁵⁹ ICTR-96-4, CONTRA001205, *Akayesu* – Transcript of 4/11/1997, 04/11/1997, 141.

⁶⁰ CONTRA001227, 46–7.

⁶¹ See also, ICTR-00-61, TRA005152/1, *Gatete* – Redacted Transcript of 08/03/2010, 08/03/2010, 64.

⁶² During another testimony, a witness similarly noted the communal nature of the violence, as represented by the killing and eating of cows after participating in the violence. CONTRA001178, 107.

⁶³ ICTR-99-46, TRA000126/02, *[Cyanguu] – Ntagerura et al* – Redacted Transcript of 23/10/2000, 23/10/2000, 66 and 101.

Prosecution: So you considered that you were acting in compliance with the directions of the local authorities.

Witness: Yes. That is correct, because that's what happened.

Prosecution: And you wouldn't have killed, except for the fact that you were told.

Witness: If I had not been—if I had not been given the orders to kill, I would not have killed anyone.’⁶⁴

This is not to say that this worked *against* the prosecution’s legal interests nor undermined the legal value of the testimony. The exchange above, which notes the authorities’ involvement, helped to establish the local authorities’ (such as Gatete) responsibility for the violence and as such advanced the prosecution’s case.⁶⁵ This type of testimony could also counter the defence’s contention that a witness’s perpetrator status meant that their credibility should automatically be suspected as this helped to contextualise their reasons for participation, and so challenged the idea that they were sadistic killers that could not be trusted (a common line of argument pursued by the defence).⁶⁶ The same was true for the victims’ narratives noted above, whereby as long as the legal criteria were also met there was nothing detrimental about these fuller accounts of the violence. In many respects this made the testimony more compelling and therefore *increased its probative value*. The most pertinent example of potential overlap here was, again, the symbolism attached to the witnesses capturing the accused words—such as ‘Never ask me again what a Tutsi tastes like’—and the *legal* role that this played in establishing the accused’s intent.

⁶⁴ TRA005152/1, 85.

⁶⁵ Indeed, this type of thicker narrative nearly always seemed to serve an additional legal purpose.

⁶⁶ See for example, ICTR–99–46, TRA002063/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 13/08/2003, 13/08/2003, 27–30.

Expert Witnesses

In addition to ‘perpetrator’ and ‘victim’ witnesses, ‘expert’ witnesses also played a significant role in the ICTR’s trials.⁶⁷ Expert witnesses influenced the trial process in two ways during the trials examined here. First, they provided evidence that helped the court understand what happened in Rwanda. Second, they influenced how the court should interpret the evidence being presented.⁶⁸

The best example of the first type of expert was Alison Des Forges, who featured prominently in almost all of the early trials as an expert witness and also helped advise the prosecution more generally on their strategy.⁶⁹ She testified in *Akayesu* and her importance was evident by the fact that her testimony lasted for eight trial days (eight times as long as any other witness’s testimony) as she provided a history of Rwanda, beginning in the pre-colonial era and continuing all the way through to the genocide itself.⁷⁰ This was extremely detailed testimony, which at points was more like a lecture than an in-court act of testimony as Des Forges spoke almost completely uninterrupted for hours at a time. This testimony provided the main content for the judgement’s historical context section in *Akayesu* and most subsequent trials and was also key in the judge’s determination that what occurred in Rwanda was not a mindless outpouring of violence but, rather, genocide.⁷¹

⁶⁷ For additional discussion of expert witnesses see Intro., n. 31.

⁶⁸ Eltringham, ‘Illuminating the broader context’, 350.

⁶⁹ Senior Member of ICTR Office of the Prosecutor 2 (2015).

⁷⁰ ICTR-96-4, CONTRA001199, *Akayesu – Transcript of 11/2/1997*, 11/02/1997; ICTR-96-4, CONTRA001200, *Akayesu – Transcript of 12/2/1997*, 12/02/1997; ICTR-96-4, CONTRA001191, *Akayesu – Transcript of 13/2/1997*, 13/02/1997; ICTR-96-4, CONTRA001192, *Akayesu – Transcript of 14/2/1997*, 14/02/1997; ICTR-96-4, CONTRA001193, *Akayesu – Transcript of 18/2/1997*, 18/02/1997; ICTR-96-4, CONTRA001209, *Akayesu – Transcript of 22/5/1997*, 22/05/1997; ICTR-96-4, CONTRA001210, *Akayesu – Transcript of 23/5/1997*, 23/05/1997; and ICTR-96-4, CONTRA001211, *Akayesu – Transcript of 24/5/1997*, 24/05/1997.

⁷¹ ICTR-96-4, ICTR-96-4-0459/1, *Akayesu – Judgement*, 02/09/1998, 27–39.

More specifically, Des Forges also provided a framework through which Akayesu's actions made sense, as her narrative of the history of Rwanda (especially its political history) was framed in a way that to a great extent overlapped with the prosecution's explanation of how Akayesu came to be involved in the genocide. Des Forges' detailed testimony captured the historic use of violence against Tutsis, as a means to secure local patronage, and the importance of the shifting political landscape in Rwanda to understand the genocide—both crucial in the prosecution's account of Akayesu's path to the genocide.⁷² In particular Des Forge highlighted the significance of the introduction of multiparty politics, the growth of the MDR party (Akayesu's party) as the main opposition to the MRND, and the use of ethno-nationalism by Hutu extremists as a tool to unify what was a fractured political landscape around a common cause: genocide against the Tutsi and the eradication of all dissident voices.⁷³ This testimony explained why Akayesu, as a member of the opposition party, would resist the violence in the first weeks of the genocide (as previously discussed) and then become a willing participant when the interim government called, on 18 April, for a cross-party alliance in order for all of those in positions of privilege to retain political power by executing a genocidal policy nationwide against all those that threatened the *status quo*. Through Des Forges the genocide in Taba became a microcosm of the genocide at a national level.⁷⁴

The second type of expert witness that featured in *Akayesu* was brought in to explain Rwandan culture, both to help with the courts understanding of the violence, but also to assist

⁷² CONTRA001200, 42–4.

⁷³ CONTRA001191, 24–8, 121–4 and 132–4; and CONTRA001193, 59–60 and 101–3.

⁷⁴ This type of testimony was also seen during *Cyangugu*, as Professor Guichaoua testified as an expert witness, he not only provided a similar framework through which the violence could be understood, but even more explicitly detailed the guilt of the accused. ICTR-99-46, TRA000543/01, [*Cyangugu*] – *Ntagerura et al – Redacted Transcript of 19/09/2001*, 19/09/2001, 47; ICTR-99-46, TRA000546/2, [*Cyangugu*] – *Ntagerura et al – Redacted Transcript of 20/09/2001*, 20/09/2001; and ICTR-99-46, TRA001774/1, [*Cyangugu*] – *Ntagerura et al – Redacted Transcript of 24/09/2001*, 24/09/2001.

the court with how it should interpret Rwandan witnesses' testimony. The OTP thought this important in order to address a number of difficulties that the witnesses' testimonies had created because of how the Rwandan witnesses responded to questions. Particularly problematic was the witnesses' evasive style of answering and difficulties in ascertaining the source of the witnesses' knowledge, as the witnesses often seemed to confuse what they had heard (i.e., hearsay evidence) and seen.⁷⁵ As such, a Rwandese cultural and linguistic expert, Professor Mathias Ruzindana, Professor of Linguistics at the University of Rwanda, was called to explain some of these 'idiosyncrasies'.⁷⁶ His testimony explained that Rwandan's often changed their way of speaking depending on who they were speaking to, and that the way in which the court proceeded was alien to many Rwandans and could lead to seemingly uncooperative responses by witnesses to the counsels' questions.⁷⁷ He also stated that, because Rwandan society was rooted in an oral culture, witnesses did not always distinguish between what they saw and heard. Whilst they *could* distinguish the difference, the court would need to ask specifically about the source of their information if they wished to be sure of this.⁷⁸

Ruzindana also helped the prosecution to overcome a number of difficulties it was experiencing in getting the witnesses to explain the meaning of certain key terms because of the complexity of Kinyarwanda (Rwanda's national language). The most important words for the prosecution were: 'Inyenzi', 'Inkotanyi', and 'Ibyisto'. The prosecution argued that by 1994, as a result of propaganda and campaigns by the Hutu extremists, all of these words simply meant Tutsis. As a result, Akayesu's instruction to hunt the Inkotanyi at the

⁷⁵ Ruzindana (2015).

⁷⁶ See generally Ruzindana's testimony on: ICTR-96-4, CONTRA001189, *Akayesu – Transcript of 30/1/1997*, 30/01/1997, 105–165. See also ICTR-96-4, CONTRA001190, *Akayesu – Transcript of 4/2/1997*, 04/02/1997; and Del Ponte, 'Investigation' (see Chap. Two, n. 127), 553.

⁷⁷ CONTRA001189, 164–71.

⁷⁸ *Ibid.*, 172–6.

Gishyeshye meeting on the 19 April 1994 was, they argued, an incitement to kill the Tutsis.⁷⁹ The problem for the prosecution was that these words had multiple meanings: ‘Inkotanyi’ meant ‘Tutsis army’ or the RPF, ‘Ibyisto’ meant ‘accomplice’, and ‘Inyenzi’ meant ‘cockroach’. The court struggled to get the definition of these words that they needed through fact witnesses alone:⁸⁰

Witness: Inyenzi is another name given to Inkotanyi

Judge: Given to

Witness: Inkotanyi

Judge: But I wonder whether the name has some other meaning?

Witness: I cannot give the explanation or meaning of Inyenzi because they did not explain what Inyenzi is.⁸¹

As a result, in order for the court to *know* the ‘real meaning’ of these words, Ruzindana testified about the history of these words and explained how, by the 1990s, their predominant meaning was ‘the Tutsis’.⁸²

However, there was also an interesting tension in his testimony as in many respects he tried to offer a more complicated account than the prosecution sought. He maintained that whilst these words came to signify the Tutsis in 1994, this did not mean that these words had lost their prior meanings. As such both the context within which the statements were made and discovering how these were received and interpreted by an audience was central to understanding what these words meant when spoken. Therefore, when the prosecution pressed him to confirm that Akayesu’s incitements to hunt for Inkotanyi at Gishyeshye was akin to urging the population to commit genocide, Ruzindana responded that as an *expert*

⁷⁹ ICTR-96-4, CONTRA001175, *Akayesu – Transcript of 09/1/1997*, 09/01/1997.

⁸⁰ See also ICTR-96-4, CONTRA001179, *Akayesu – Transcript of 21/1/1997*, 21/01/1997, 40–1.

⁸¹ CONTRA001176, 41–2.

⁸² CONTRA001189, 107–61.

without being there or without more information it would impossible for him to say for sure what this utterance meant. The prosecution's need for a more concrete answer led them to ask his opinion *as a Rwandan* not an expert, and he responded that he would have understood this as a call to genocide. Interestingly, when I interviewed Ruzindana in 2015, it seems that much of the nuance he was trying to introduce into the courts understanding was lost as the legal actors in *Akayesu* ultimately came to treat *all* of these terms (such as Inkotanyi, etc.) as references to the Tutsis regardless of context.⁸³ Therefore, whilst Ruzindana's testimony clearly had an influence on the court, it was perhaps not as he intended.

This section has shown that, far from being passive actors in the process, witnesses played an active role in determining the way in which the trials proceeded and what accounts of violence were produced. This was true whether these testimonies were given by experts, perpetrators, or victims. These captured the *specificity* and *personal* nature of the violence and showed that Rwandans, both victims and perpetrators, significantly influenced the way in which the archive was constructed. This section has therefore shown that the archive should not be seen as a site which holds records purely of legal value. Rather, the archive also retains a rich source of information about the genocide due to both the witnesses' testimony and the role they played in determining how the archive itself was structured. However, as the Ruzindana example reminds us (and whilst not detracting from the above argument) these acts were still significantly constrained by the prosecution's needs and, as with Ruzindana, this could lead to distorted interpretations of the witnesses' accounts. It is also important to remember, as was argued in the previous chapter, that to a great extent the types of testimony discussed here *enhanced* the prosecution's legal case. This was true whether the depth of the testimony made the testimony appear more credible or whether allowing the witnesses to

⁸³ Senior Reviser (2015).

open up pathways to investigate and prosecute new crimes (such as sexual violence) widened and *strengthened* the prosecution's mandate and its legitimacy, as discussed further shortly.

One additional way that those that endured the genocide came to indirectly influence the proceedings was through the RPF's interventions at the Tribunal, which they claimed were motivated by protecting the victims' rights. The final section of this chapter will look at these interventions and determine what motivated the RPF in these instances and how this influenced the accounts of violence produced within the archive. Were these interventions driven by a concern with victims' needs, thus representing another way in which the archive reflected victims' interests? Or was this tactic pursued for other reasons, bringing other factors into play?

Rwanda and the ICTR

From the outset, the Rwandan government's influence over the ICTR was apparent. Although the Rwandan government ultimately opposed the creation of the Tribunal, it won a number of important concessions from the ICTR that would alter the framework within which the trials took place. In particular, as aforementioned, after the RPF government objected to the proposed temporal jurisdiction of 6 April 1994 to 17 July 1994, on the grounds that this would not adequately capture the planning of the genocide (thereby missing out a key part of the violence), the jurisdiction was extended to run from 1 January 1994 until 31 December

1994.⁸⁴ This would, as was argued in the previous chapter, have important consequences for what accounts of violence would be created by the Tribunal.

This pattern continued with the Rwanda government's intervention during the 'Barayagwiza affair'. In 1996, the Tribunal arrested Jean Bosco Barayagwiza in Cameroon for his contribution to the genocide as co-founder of the radio station RTLM and also a former head of the extremist party *Coalition pour la Défense de la République* (CDR). However, in November 1999 an appeals chamber ordered his release, having found that his rights had been irrevocably violated as a result of being detained for a year without being charged.⁸⁵ Barayagwiza was a significant figure within the genocide's leadership, and the Tribunal's decision was both legally and politically important, as this demonstrated that it would uphold the basic principles of the rule of law and the rights of the defendant *regardless* of the political significance of the accused. The decision caused outrage in Rwanda, as the RPF government argued that the Tribunal was insulting the victims of the genocide by releasing a key defendant on a technicality.⁸⁶ In protest the Rwandan government withdrew all support for the Tribunal, which effectively brought the court to a standstill.⁸⁷ Del Ponte, in a speech to the UNSC, barely hid the severity of the situation, *nor the political necessity* of the decision being overturned.

[W]hether we like it or not, we must come to terms with the reality that our ability to continue our investigations depends on Rwanda [... Without this cooperation] we might as well open the doors to the prison. It is my hope that Jean Bosco Barayagwiza will not be the one to decide the fate of this tribunal.⁸⁸

⁸⁴ Moghalu, *Rwanda's Genocide* (see Intro., n. 75), 32–33; Yacoubian, 'The Efficacy of International Criminal Justice' (see Chap. One, n. 91), 188; and S/PV.3453, 3453rd Meeting, 08/11/1994, 14.

⁸⁵ James Stewart, 'NYU JILP Symposium: New Thoughts about Barayagwiza: Reactions to Policing International Prosecutors', *Opinion Juris*, 05/04/2014, (see Internet Materials list).

⁸⁶ Christopher Wren, 'UN Tribunal Wrong to Free Top Suspect, Rwanda Says', *New York Times*, 12/11/1999.

⁸⁷ Peskin, *International Justice* (see Intro., n. 75), 179; 'Warning over Rwandan Suspect', *BBC News*, 22/022000. (see Internet Materials)

⁸⁸ Moghalu, *Rwanda's Genocide*, 177.

The prosecution appealed the decision and a different appeals panel ultimately decided to reverse the prior decision on the basis of ‘new evidence’ presented by the prosecution that showed Barayagwiza’s rights had not been infringed and ruled that, regardless, any infringement of the defendants’ rights should be dealt with at the sentencing stage of the trial.⁸⁹ As Del Ponte’s speech made clear, and as has not really been disputed, the decision saw the Tribunal submit to the RPF’s pressure. This set the tone for the Rwandan government’s relationship with the Tribunal and showed that the RPF could heavily influence the way in which the prosecutions proceeded, shaping the accounts of violence contained within the archive. It turned out that in some respects Barayagwiza *was* to decide the fate of the Tribunal.⁹⁰

Importantly, the arguments mobilised by both Del Ponte and the RPF noted that the issue exceeded purely political interests. Both sides argued that overturning the decision to release Barayagwiza was in the interests of upholding *the rights of the victims* and their demand for

⁸⁹ Stewart, ‘Barayagwiza’; S/2002/1375, *Letter dated 16 December 2002 from the Secretary-General addressed to the President of the Security Council*, 19/12/2002, 2; A/54/PV.48, 54th Session: 48th Plenary Meeting, 08/11/1999, 24–27; A/55/269, *Situation of Human Rights in Rwanda: Report of the Special Representative of the Commission on Human Rights on the situation of human rights in Rwanda*, 04/08/2000, 36; and A/57/PV.36, 57th Session: 36th Plenary Meeting, 28/10/2002, 14. Rwanda suspended cooperation another time when they were protesting against the employing of genocidaires, the treatment of witnesses during the hearings, and what they called the ‘revisionist’ voices coming from both the Chambers and the Defence councils. S/2002/1043, *Letter dated 17 September 2002 from the Permanent Representative of Rwanda to the United Nations addressed to the President of the Security Council*, 19/09/2002, 117.

⁹⁰ The Rwandan government made it clear whenever they were dissatisfied with a decision rendered by the Tribunal, and the relationship was particularly stretched once more when the Rwandan government arrested Paul Erdingger, defence council at the ICTR, under the charge of genocide denial due to arguments he led during an ICTR trial when trying to defend his client. S/2011/317, *Letter dated 12 May 2011 from the President of the International Criminal Tribunal for Rwanda addressed to the President of the Security Council: Report on the Completion Strategy of the International Criminal Tribunal for Rwanda (as of 12 May 2011)*, 18/05/2011, 14. There was, moreover, other ways in which Rwanda influenced the record created by the Tribunal. This was both by withholding cooperation over certain requests (often made by the defence counsels) for access to certain documents. There was also evidence, as emerged during *Cyangugu*, that the government *destroyed* evidence in some instances. During *Cyangugu*, a defence investigator noted that the cells in the former military camp had been destroyed the day before they returned to take pictures of them as evidence to undermine the claims made by a number of the prosecution’s witnesses. No other buildings were similarly destroyed. ICTR–99–46, TRA001780/1, [*Cyangugu*] – *Ntagerura et al* – *Redacted Transcript of 14/10/2002*, 14/10/2002, 16.

justice.⁹¹ In court, Del Ponte asked the judges: ‘Do you believe that three months’ delay in the transfer of Barayagwiza, who risks a life sentence, is more serious than the hundreds of thousands of victims?’⁹² As this suggests, this move was seen as being very much in the interests of the victims. Indeed, whilst not enough is known about how Rwandan society generally, but the victim community specifically, reacted to the Tribunal, evidence suggests that the chamber’s decisions in cases like Barayagwiza, or when prosecution errors led to acquittals, as with Bagambiki and Ntagerura, did negatively affect the victims.⁹³ Alexia, a witness to the massacre at Mibilizi, Cyangugu, noted:

As a survivor of the genocide, I regard the release of Bagambiki as an expression of denial. It is to deny, in its totality, the genocide that took place throughout the prefecture. It also reinforces impunity. It seems to me that the ICTR exists to turn the knife in the wounds of survivors.⁹⁴

For Caritas, another survivor and former witness at the Tribunal, the news of Bagambiki’s release caused her to decide that she would no longer cooperate with the Tribunal and she refused to testify in other trials.⁹⁵ To an extent, then, the RPF appeared to intervene on the side of the victims and so the ICTR’s decisions to bend to the RPF’s will in cases such as *Barayagwiza* reflected another indirect way that the victims influenced the way in which the Tribunal constructed their accounts of violence.

The RPF’s most significant intervention, however, was a reaction to the OTP’s plans to produce a number of indictments against members of the RPF for the crimes they committed

⁹¹ *BBC News*, ‘Warning over Rwandan Suspect’.

⁹² *Ibid.*

⁹³ *Supra* note 17, 56 and 64. There is, of course, limited value in speaking about ‘Rwandan society’. This is perhaps no more so than somewhere like here where for a potentially significant portion of the population the release of people like Bagambiki was likely well received. What becomes of interest then, as discussed more below, is which constituency is being mobilised when ‘Rwanda’ is referred to, and whose interests, within these fractured communities, were governing these interventions.

⁹⁴ *Ibid.*, 65.

⁹⁵ *Ibid.*, 65–6. See also pp. 67–70.

whilst invading Rwanda, which saw thousands of victims (mainly Hutus) slaughtered. These charges were particularly pursued by Del Ponte, who sought to address the OTP's previous neglect of RPF crimes in an attempt to avoid victor's justice. However, in 2003, as Del Ponte was preparing to submit the first indictments for these cases, the RPF government responded by blocking all witnesses from travelling to Arusha to testify, which, once more, brought the Tribunal to a standstill.⁹⁶ The RPF's strategy was ultimately successful, and the indictments were shelved—later Del Ponte was also removed from her position as ICTR prosecutor.⁹⁷

As this shows, the Rwandan government actively shaped the way in which the Tribunal produced its accounts of the Rwandan genocide. The significance of these interventions, especially for the contents of the archive, should not be underestimated. These have not only resulted in the distinct *absence* of narratives (at least produced by the prosecution) concerning the RPF's violence, but it also ensured that the role of Barayagwiza during the genocide *is* contained within the archive. As such, it appears that the archive was very much constructed, in part, as a result of the RPF's interests, which at times appeared driven by a desire to protect the rights of the victims. However, a closer look at these issues demonstrates that the apparent divide between the Tribunal, on one side, and RPF, victim communities and the witnesses on the other was perhaps not as clear cut as this makes out.

⁹⁶ CERD/C/SR.1212, *International Convention on the Elimination of all forms of Racial Discrimination, Summary of Record of the 1212th Meeting*, 26/03/1997, 3–4 and 7–8; and A/C.3/52/SR.34, *Third Committee: Summary Record of the 34th Meeting*, 17/02/1998, 4–5.

⁹⁷ Peskin, *International Justice*, 219–22; *Supra* note 86, 127. During interviews conducted in 2015, both James Arguin (former head of appeals) and another senior figure at the Tribunal offered an alternative explanation for this. They noted that these indictments were dropped as a result of the UNSC completion strategy which meant that they were to only prosecute the most serious crimes, which in this context meant genocide. Both argued the OTP had not abandoned the cases against the RPF but had, rather, transferred these to Rwanda for prosecution. However, the timings noted above, the removal of Del Ponte, the prior history of accepting the RPF's demands, and the strong sense that this was an argument developed retrospectively to quell criticism against the Tribunal, make it appear that the prosecution's political consideration trumped other concerns here. It is without a doubt that without the RPF's intervention, Del Ponte would have submitted the indictments against the RPF for confirmation. Head of Appeals (2015); Senior Member of the ICTR Office of the Prosecutor 3 (2015) – (Arusha, Tanzania: June); and S/RES/1503, *Resolution 1503*, 28/08/2003, 2.

First, it was unclear whether the RPF always had the interests of victims at heart when challenging the Tribunal. There was something deeply problematic about the RPF's obstruction of the OTP's investigations into RPF crimes. As Peskin has argued, the RPF's interventions at the Tribunal seemed to be directed at securing its identity as the ultimate 'victim', which it could then mobilise symbolically to pursue its interests at the Tribunal, domestically, and within the Great Lakes region more generally, and all without any condemnation from the international community.⁹⁸ Indeed, the RPF's interventions here, which also meant that the Tribunal acted as yet another site where Hutu victims were largely silenced, contributed to sense of the Hutus as the always already perpetrators, which helped legitimise the RPF's use of coercive governance techniques that first targeted the Hutu population (before turning to all those seen to oppose the regime's interests), and exonerated the RPF from confronting its past and present violence.⁹⁹ This appeared, as such, to be

⁹⁸ Peskin, *International Justice*, 154. It is telling, for instance, that at the UN Rwanda begin most speeches, especially where they were responding to criticism from other member states, by declaring that the international community had stood idly by whilst the genocide spread. Further evidence can be seen in these comments by Paul Kagame: 'Any crimes committed by individuals within the RPA were investigated and punished. They [the ICTR] know that very well. [...] How then does the ICTR attempt to place the RPA, who actually put an end to the genocide, at the same level as the genocidaires, the very perpetrators of the genocide? [...] They [the international community] simply ran away from responsibility and left people to be killed in the thousands. [...] So what moral authority do they have?' E/CN.4/1998/SR.2, *Fifty-Fourth Session: Summary Record of the 2nd Meeting*, 19/03/1998, 6. See also A/C.3/51/SR.44, *Third Committee: Summary Record of the 44th Meeting*, 19/11/1996, 9–10; and Zorbas, 'Reconciliation', 34. Moreover, after the direct intervention of the Rwandan government a number of Human Rights reports written about Rwanda in the late 1990s were edited to add in a statement recognising the suffering Rwanda endured, and the continued difficulties it had subsequently faced, as a result of the genocide, prior to discussing any current human rights violations. A/C.3/53/L.29/Rev.1, *Situation of human rights in Rwanda: Draft Resolution*, 19/11/1998. Ultimately, moreover, as a result of Rwanda's protest about the UN's intervention in its affairs, the UNHCR field office was forced to close. A/53/367, *Human Rights Field Operation in Rwanda: Report of the United Nations High Commissioner for Human Rights on the Human Rights Field Operation in Rwanda*, 11/09/1998, 4–8.

⁹⁹ Filip Reyntjens, 'Constructing the Truth, Dealing with Dissent, Domesticating the World: Governance in Post-genocide Rwanda', *African Affairs* 110:438 (2011), 18 and 30–1; and Filip Reyntjens, 'Rwanda, Ten Years on: from Genocide to Dictatorship', *African affairs* 103:411 (2004), 103 and 199. Over time divisions within Rwanda under the RPF would become more complex still, as survivors and 'returnees' (both largely Tutsis) also became pitted against each other. In the end, loyalty or (perceived) opposition to the current regime remains the most significant division (much like under the Habyarimana's rule, and then the interim government's rule during the genocide). Eugenia Zorbas, 'Reconciliation in Post-genocide Rwanda', *African Journal of Legal Studies* 1:1 (2004), 40–7 and 186–93.

directed at solidifying the RPF's grip on power in Rwanda,¹⁰⁰ rather than of concern with those that had suffered in 1994.

Second, whilst on the surface victims' responses to decisions like *Barayagwiza* suggested an instance of two different ideas of justice colliding,¹⁰¹ underneath, this is perhaps more a case of discrepancy between the *possibilities* of justice and its actual execution. The case of *Barayagwiza* generated the negative sentiment it did not because of anything inherent within the law but because it was poorly handled by the prosecution (the same is true for the acquittals of Bagambiki and Ntagerura). Indeed, what was also notable from Redress's interviews with those that testified at the Tribunal was the level of hope and expectation that came with testifying, with one witness noting that it made them feel 'lighter' inside to know that the crime committed against them was now being dealt with legally.¹⁰² This could also be true for 'perpetrator' witnesses, as a number of these stated that they were testifying in order to address their guilty conscience, and in hope of receiving forgiveness.¹⁰³ That this failed in some instances does not exclude the possibility that, under certain conditions, the desires of the witnesses and the needs of the court could coincide, as the above analysis also showed.

¹⁰⁰ Zorbas, 'Reconciliation', 40–4.

¹⁰¹ There is also some difficulty in speaking about 'victim communities', and as Zorbas shows, overtime this group became increasingly fractured, as, for instance, 'returnees' began to occupy a more privileged position against those more directly effected by the violence in 1994. *Ibid.*

¹⁰² *Supra* note 17, 66 and 68. Moreover, during an interview with François-Xavier Nsanzuwera, he noted that what made him happiest and most confident that the Tribunal had a positive impact on Rwanda (he himself is Rwandan) was that many of the witnesses (some of which he had known for a long time) continued to agree to assist the OTP with their investigations. Senior Appeals Attorney (2015).

¹⁰³ For example: ICTR-99-46, TRA000751/01, [*Cyangugu*] – *Ntagerura et al* – Redacted Transcript of 25/09/2001, 25/09/2001, 33

Conclusion

This chapter has demonstrated the complex relationship that existed between the witnesses, the prosecution, and the Tribunal more generally. This first of all showed the ways in which the witnesses influenced the prosecution's approach to the proceedings during both the investigations and the trials. Witnesses 'co-produced' each of the trial's frameworks, contested these frameworks, contributed towards a shift in the way in which evidence was treated, and maintained a degree 'ownership' over the *meaning* of the genocide in the face of law's tendency to generalise. With this, then, the witnesses worked within, but also reshaped, the 'conditions of truth' set out at the end of the previous chapter. This theme appeared on the surface to continue in the final section of the chapter as the RPF, claiming to represent the victims of the genocide, continued to influence the way in which the trials proceeded, as demonstrated by the Barayagwiza affair.

This also, then, points to another analytical concept that can help to explain why the archive exists as it does, which is the 'processes of truth'. Indeed, this analysis has shown that it is not only important to consider the aesthetic quality of the statements (and the rules that determine their content) but also the means, methods and techniques through which these statements were produced and the different stages through which the archive was created. As this chapter has shown, what roles are afforded to different actors during the process and the relationship *between* the actors are particularly important here. For as is clear, whilst witnesses actively contributed towards the production of the archive, the way in which they interacted with the Tribunal's legal actors had an important bearing on which records were produced for the archive.

However, underneath this notion of the power of those that suffered during the genocide to influence the Tribunal and its archive lies a slightly different story. As the final section suggested, for instance, the RPF's motivations for intervening in the Tribunal arguably did not always have the interests of Rwandan society at heart, as appeared also true of the Tribunal's decision to acquiesce to the RPF's demands.¹⁰⁴ These types of decisions start to introduce doubt about the extent to which the court was driven by a desire to address the needs of those who had suffered during the violence that it was tasked to address. This was also pointed to when, as discussed in the first part of the chapter, it became clear that the prosecution benefited both legally and politically from those acts described above that seemingly captured examples of the witnesses' agency. The witnesses' more detailed testimony of their experiences of violence also, for instance, offered evidence that was of significant legal value to the prosecution. Moreover, as has been stressed throughout, acknowledging the importance of the witnesses' role is not the same as saying that they had free reign over the trials. As will become clear in subsequent chapters, these encounters between the witnesses and the court often highlighted tensions among the interests and needs of the different actors of the courtroom.¹⁰⁵ The questions that need to be asked, then, are: when did the court succeed in functioning as a site that served multiple stakeholders simultaneously? When did (as with the dropping of the RPF's indictments) different interests come into tension? Where there was a tension, how was this resolved? And what does this mean for whose archive?

¹⁰⁴ The effects of this fracturing of Rwandan society into different groups with competing interests also demonstrates a more general issue with the use of these courts as sites of transitional justice and peacebuilding. For as becomes clear here, these processes are seemingly inherently divisive as they amplify difference within post-atrocity communities and render transition as a zero-sum game where one community must win out over another.

¹⁰⁵ Victim and Witness Support (2015); and Senior Reviser (2015).

This, moreover, remains only a partial picture of the way in which the archive was constructed. What was the role of the defence and the chambers throughout this process and how did they bring to bear their own interests here? How did they influence the trial process and the archive and to what extent were their interests at odds with the witnesses and prosecution? Where these were at odds, whose interests prevailed and what mark did this leave on the archive? The following chapters will explore these issues.

Chapter Four: Defence in International Courts

Introduction

The last two chapters considered how the prosecution and their witnesses constructed accounts of violence, and why their accounts were constructed so, drawing attention to what has been described here as the ‘conditions’ and ‘processes’ of truth. This chapter turns to the defence and looks at the different types of narrative it produced, and what other strategies it employed, as they tried to secure acquittals for the defendant, and the effects this had on the archive. This is an under researched area, with very few accounts given of what it means to *defend* a genocide case.¹ This not only reinforces a tendency to see the prosecution as representing the ‘good’ and the defence defending the ‘bad’, but undermines the key role of defence teams in shaping each of the trial’s account of violence. Overall, this chapter considers the extent to which, and in what ways, the defence contributed towards producing a particular understanding of violence within the records deposited within the archive.

During each of the trials, the defence, with very few exceptions, did not contest whether the particular crimes that the prosecution focused on occurred. Rather, the defence drew on a series of narrative structures that altered the emphasis of these accounts, particularly concerning who (if anyone) was responsible for the violence. The first section of the chapter

¹ See Intro., n. 36.

will consider each of these narrative structures in turn, which can be categorised as: a) character based arguments that also emphasised that the accused ‘did what they could’; b) a chaos and diminished responsibility argument; and, c) the construction of counter–histories. These served two functions. First, and most importantly, each of these narratives were driven by the attempt to introduce ‘reasonable doubt’ into the minds of the judges about the validity of the prosecution’s case. In this sense, just as the prosecution’s witnesses were forced to testify through the specific frameworks, the defence witnesses’ testimonies were similarly moulded to fit within these various structures as they were used in pursuit of legal ends. As will be explored below, however, the court also provided space whereby counter–hegemonic narratives were produced, particularly concerning both the international nature of the violence and the RPF (absent in the prosecution’s account).

The second part of this chapter looks at the other methods drawn on by the defence as they intervened in the court process to undermine the prosecution’s case. First, I will consider how cross–examination was used, and how this also compared to the prosecution’s reliance on this method. Second, I will look at how the defence actively contested the very basis of the prosecution’s case, before finally looking at the effects of the *quality* of the defence at the ICTR.

Constructing Narratives of Innocence

'Did What He Could'

The first narrative framework employed by the defence was one that focused on the accused's lack of intent, which also, pushing beyond this, argued that the accused 'did what he could' to *stop* the genocide. In pursuit of this, the defence emphasised the accused's lack of animosity towards the Tutsis, suggesting by extension their inability to have been involved with the planning or execution of the genocide. During each trial, witnesses came forward to declare that the defendants had never treated Tutsis unfairly, nor made any anti-Tutsi statements.² Their disposition in this regard was particularly emphasised by showing that the defendant had relatives or, even better, spouses, who were Tutsis,³ and that where they could they tried to *save* Tutsis during the ensuing violence.⁴ In a similar vein, the defence also emphasised the peace-loving nature of the accused,⁵ and, in Ntagerura's case, their support of multiparty politics and the Arusha Peace Accords (APA), with numerous witnesses testifying to

² For examples see: *Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4, CONTRA001207, *Akayesu – Transcript of 17/11/1997*, 17/11/1997, 17; *Prosecutor v. André Ntagerura*, Case No. ICTR-99-46 (hereafter ICTR-99-46), TRA000525/1, [Cyangugu] – *Ntagerura et al – Redacted Transcript of 19/03/2002*, 19/03/2002, 7; and ICTR-00-61, ICTR-00-61-0240/1, *Gatete – Judgement and Sentence*, 31/03/2011, 40.

³ ICTR-99-46, TRA000528/2, [Cyangugu] – *Ntagerura et al – Redacted Transcript of 11/03/2002*, 11/03/2002, 28; and TRA000525/1, 4.

⁴ ICTR-96-4, CONTRA001238, *Akayesu – Transcript of 26/03/1998*, 26/03/1998, 47; ICTR-96-4, CONTRA001214, *Akayesu – Transcript of 19/11/1997*, 19/11/1997, 35–36; See also, ICTR-96-4, CONTRA001217, *Akayesu – Transcript of 9/2/1998*, 09/02/1998, 69; ICTR-99-46, TRA001998/1, [Cyangugu] – *Ntagerura et al – Redacted Transcript of 05/02/2003*, 05/02/2003, 21 and 24; ICTR-99-46, TRA002000/1, [Cyangugu] – *Ntagerura et al – Redacted Transcript of 11/02/2003*, 11/02/2003, 26–7. These narratives also emphasised, more generally, that the defendants' characters were such that the violence that they were being accused of was incompatible with how they were as people.

Mr. Jean-Paul Akayesu, everybody talked about his integrity. He is a good father. I think that Mr. Jean-Paul Akayesu is not a person who will come and say, "Go rape Tutsi women and then don't come and tell me or ask me how does a Tutsi woman taste. Mr. Akayesu is a family head. I saw his wife. I saw his five children. And it is with pride that today I am ensuring his defence. I say so with conviction because Mr. Jean-Paul Akayesu is not capable of committing such crimes. CONTRA001238, 57–8

⁵ ICTR-99-46, TRA000527/2, [Cyangugu] – *Ntagerura et al – Redacted Transcript of 13/03/2002*, 13/03/2002, 22–5; and ICTR-99-46, TRA001602/2, [Cyangugu] – *Ntagerura et al – Redacted Transcript of 27/03/2002*, 27/03/2002, 11.

Ntagerura's role in implementing the APA and then negotiating a ceasefire with the RPF.⁶ The defence also distanced the defendants from the political elite, replacing the prosecution's accounts of the accused's nepotistic relationship with the *Akazu*, for narratives that emphasised their clients' professional suitability for their high-powered roles.⁷ Wherever possible, the accused's *lack* of authority and agency was emphasised as they were rendered servants of the state rather than power hungry despots.⁸

These narratives also fed into the defence's argument that the defendants 'did what they could' to stop the violence during the genocide. During *Akayesu*, for instance, the defence told of how, for two weeks, Akayesu had warded off those trying to start the genocide within

⁶ ICTR-99-46, TRA001610/2, [Cyangugu] – Ntagerura et al – Redacted Transcript of 21/03/2002, 21/03/2002, 25–6 and 54. In a particularly 'hammy' response by Ntagerura, which demonstrated his support for the APA, he stated:

Yes, the fundamental law did not prohibit political meetings or rallies during the period you just referred to. I should underscore that when talking about the fundamental law what I understand by this is the Arusha Peace Accords which were signed on the 4th of August 1992 plus the constitution which had been adopted on the 10th of June 1991. ICTR-99-46, TRA001291/2, [Cyangugu] – Ntagerura et al – Redacted Transcript of 17/07/2002, 17/07/2002, 71.

In a similar vein, although less prominent, was Gatete's narrative of his pre-1994 work. In effect, the defence argued here that Gatete was not the sort of person that could participate in the planning and execution of a genocide in his region when he had spent so many decades tending to its needs and ensuring that it was peaceful and prosperous. *Prosecutor v. Jean Baptiste Gatete*, Case No. ICTR-00-61 (hereafter ICTR-00-61), CONTRA018674, Gatete, Redacted Transcript of 02/03/2010, 02/03/2010, 10; ICTR-00-61, TRA005148/1, Gatete – Redacted Transcript of 03/03/2010, 03/03/2010, 19; and ICTR-00-61, TRA005152/1, Gatete – Redacted Transcript of 08/03/2010, 08/03/2010, 60.

⁷ ICTR-99-46, TRA002063/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 13/08/2003, 13/08/2003, 20–2; ICTR-99-46, TRA001292/2, [Cyangugu] – Ntagerura et al – Redacted Transcript of 18/07/2002, 18/07/2002, 69; Cyangugu, Redacted Transcript, TRA002090/2, 26/03/2003, 63; and ICTR-96-4, CONTRA001231, Akayesu – Transcript of 12/3/1998, 12/03/1998, 21.

⁸ The defence also constructed narratives that emphasised the accused's law-abiding nature to assist with the argument that the events as alleged by the prosecution's witnesses were an impossibility. Ntagerura testified that:

Well, Counsel, I should say, first of all, the MRND had members who were Tutsi and as a minister of the MRND — a minister from the MRND, it would — it was unacceptable before the militants of my own party to say these words, and there would have been consequences from my own party. The same consequences would have come from the other political parties as well, because, as I said yesterday, the press — the media were there. This was a public meeting. As I saw what you had read, it was a public meeting. The press could have used this information and had a responsibility to do so. TRA001292/2, 85.

See also TRA001292/2, 12 and 97; ICTR-99-46, TRA001851/2, [Cyangugu] – Ntagerura et al – Redacted Transcript of 20/01/2003, 20/01/2003, 47 and 49; ICTR-99-46, TRA001271/2, [Cyangugu] – Ntagerura et al – Redacted Transcript of 16/05/2002, 16/05/2002, 22–7; and ICTR-99-46, TRA001276/2, [Cyangugu] – Ntagerura et al – Redacted Transcript of 22/05/2002, 22/05/2002, 17.

Taba, organising security patrols and public meetings, and utilising the communal police force to do so.⁹ As the defence argued:

Defence: Now, if Akayesu was preventing the killings in Taba that means that he was not against the Tutsi?

Witness: He was not against the Tutsi. Thank you.¹⁰

Even when Akayesu was overcome by ‘outside forces’, and could no longer resist the violence *en masse*, he nonetheless continued to save those Tutsis he could.¹¹

Bagambiki’s defence utilised this narrative structure with particular intensity, emphasising his efforts to stop the violence wherever he could, and this played a key role in his acquittal.¹² So whilst the prosecution had argued that Bagambiki had moved the refugees from Cyangugu Parish to Kamarupaka stadium to make killing them easier, Bagambiki argued that the refugees were moved in order to *ensure their protection*.¹³ The openness of the Church compound made it difficult, the defence argued, to protect the refugees with the handful of gendarmes that Bagambiki had at his disposal, whereas the enclosed stadium would make this far easier *and* would offer much better sanitary conditions. Similar narratives were presented about each of the massacre sites where Bagambiki was implicated: at Nyamasheke Parish he

⁹ The Akayesu defence asked one prosecution witness: ‘So, then, if Akayesu did, he did then try to prevent the massacres during this period, so that would mean that ideologically speaking, he was not against the Tutsi?’ ICTR-96-4, CONTRA001180, *Akayesu – Transcript of 22/1/1997*, 22/01/1997, 85. See also, CONTRA001214, 33–6.

¹⁰ ICTR-96-4, CONTRA001186, *Akayesu – Transcript of 27/1/1997*, 27/01/1997, 59.

¹¹ For example, see CONTRA001217, 69–70.

¹² ICTR-99-46-0599/1, *Trial Judgement – the Prosecutor v. André Ntagerura Emmanuel Bagambiki Samuel Imanishimwe*, 25/02/2004, 235.

¹³ ICTR-99-46, TRA001920/1, *[Cyangugu] – Ntagerura et al – Redacted Transcript of 01/04/2003*, 01/04/2003, 55. A similar argument was mobilised by Imanishimwe. ICTR-99-46, TRA000435/2, *[Cyangugu] – Ntagerura et al – Redacted Transcript of 15/02/2001*, 15/02/2001, 14; and ICTR-99-46, TRA000438/1, *[Cyangugu] – Ntagerura et al – Redacted Transcript of 21/02/2001*, 21/02/2001, 59–61.

had sent gendarmes and personally intervened to turn away a group of attackers¹⁴; at Mibilizi Parish he had sent his sous-préfet to stop a pending massacre;¹⁵ and at Shangi, after he found out about an attack, he sanctioned a bourgmestre who had been involved.¹⁶ Unlike the prosecution's assertion that these actions were evidence of Bagambiki's responsibility (since each of these interventions coincided with the worst massacres at each site), Bagambiki argued that this showed that he had done what he could.¹⁷

This narrative was reinforced through an example of his successful intervention in the chaos that had enveloped Cyangugu in the wake of Martin Bucyana's death—the former head of the CDR—in February 1993.¹⁸ At that time Bagambiki convened security meetings and conducted 'pacification tours' and successfully reintroduced peace and security within the region.¹⁹ Bagambiki used exactly the same tactics during the genocide to reintroduce peace and security within Cyangugu: he held three prefecture security council (PSC) meetings within the first two weeks of the genocide, which included one enlarged PSC where local persons of importance (such as the clergy) were called in to assist, and held pacification meetings, including one with President Sindikubwabo and Ntagerura.²⁰ However, unlike in 1993, during the genocide these actions failed. These narratives not only showed

¹⁴ ICTR-99-46, TRA001909/1, [*Cyangugu*] – *Ntagerura et al* – *Redacted Transcript of 24/02/2003*, 24/02/2003, 15–6; ICTR-99-46, TRA001910/1, [*Cyangugu*] – *Ntagerura et al* – *Redacted Transcript of 25/02/2003*, 25/02/2003, 12–3; and TRA001920/1, 26–7.

¹⁵ ICTR-99-46, TRA001915/1, [*Cyangugu*] – *Ntagerura et al* – *Redacted Transcript of 24/03/2003*, 24/03/2003, 24–6.

¹⁶ TRA001909/1, 15–6; and ICTR-99-46, TRA001918/1, [*Cyangugu*] – *Ntagerura et al* – *Redacted Transcript of 27/03/2003*, 27/03/2003, 22.

¹⁷ See section on the Gihundwe School for another example of his intervention. TRA000434/2, 129–30. Many of these narratives were mimicked by Imanishimwe during the trial. However, the main exception here was that Imanishimwe's defence only seemed to half-heartedly go in for this narrative and rather tried, instead, to argue that it was not his responsibility to intervene to prevent the massacres —discussed more below.

¹⁸ ICTR-99-46, TRA001919/1, [*Cyangugu*] – *Ntagerura et al* – *Redacted Transcript of 31/03/2003*, 31/03/2003, 4–6.

¹⁹ ICTR-99-46, TRA002001/1, [*Cyangugu*] – *Ntagerura et al* – *Redacted Transcript of 13/02/2003*, 13/02/2003, 11–5.

²⁰ TRA001918/1, 33–5.

Bagambiki's propensity towards peace, rather than violence, but also showed that when he was in a position to—when the *context* allowed—he *could* have a positive impact in maintaining peace and security, an argument that was ultimately accepted by the court.²¹

In fact, Bagambiki's willingness to stop the genocide as emphasised in his defence meant that he himself was attacked during the violence, which rendered Bagambiki a victim—a narrative also mirrored in *Akayesu*.²² A second 'victimisation' presented within this narrative was that Bagambiki was forced to stand helplessly by (having done what he could) and watch the massacres of his constituents.²³ Bagambiki testified:

I do regret that I was not able to save all of those I would have liked to save, and I ask for forgiveness and understanding from those who were disappointed by my

²¹ *Ibid.*, 31–5 Interestingly, one of these proposals was: 'to incite citizens to continue to track the enemy, regardless of where he is hiding and wherever he is hiding weapons without, however, threatening or mistreating innocent persons.' (p. 34). The failure of the prosecution to capitalise on the defence's acceptance that these types of instructions were issued—which were clearly active calls for the population to participate in the violence—is also an important issue here. The 'did what he could' narrative was, moreover, accepted by Judge Ostrovsky in his dissenting opinion. He said,

I am aware of the deplorable conditions at Cyangugu Cathedral and Kamarampaka Stadium. I am also aware that Prefect Bagambiki, sub-Prefect Munyagabe [*sic*], and the gendarmes provided, at times, only minimal protection for the refugees. However, I bear in mind the chaotic situation prevailing in the prefecture and throughout the country [...]. I am not convinced that Bagambiki, with the resources available to him, could do more for the protection of refugees in Cyangugu prefecture. ICTR-99-46-0599/1, 235.

²² TRA001919/1, 5–6. A similar narrative was told during *Akayesu*. ICTR-96-4, CONTRA001208, *Akayesu* – *Transcript of 18/11/1997*, 18/11/1997, 34–5.

²³ TRA002001/1, 6; ICTR-99-46, TRA002001/1, [*Cyangugu*] – *Ntagerura et al* – *Redacted Transcript of 13/02/2003*, 13/02/2003, 11–2.

It's true that there's no human initiative that can be perfect, but I did what I could. I do not regret staying because if I had fled, as Guichaoua suggests, I would not be here today. I would be a free man in terms of my movement, but I would have to face another tribunal, another judge, and the judge of my conscience who would tell me that I abandoned people who were in danger, that I did not try to do what I could to save them. I would be in another prison, in the prison of remorse. ICTR-99-46, TRA001921/1, [*Cyangugu*] – *Ntagerura et al* – *Redacted Transcript of 02/04/2003*, 02/04/2003, 19–20.

I would like to seize this opportunity to ask my fellow citizens who survived the Rwandan tragedy, whatever their tribe, their creed or religion, especially those of Cyangugu, to understand me and forgive me. I ask for forgiveness for those who hoped that I could automatically stop the massacres, and that in so doing save them or their loved ones, but who instead watched sadly, powerlessly, as I displayed my limits in the face of this blind violence. I ask for forgiveness for those who watched in pain for the coming of assistance. I ask for forgiveness for my family and all those who were under my roof, who, with me, spent long days of worry and endless nights sharing my concerns and my failures in the face of the scope of the disaster. ICTR-99-46, TRA002962, [*Cyangugu*] – *Ntagerura et al* – *Redacted Transcript of 07/02/2006* – *Appeals Hearing*, 07/02/2006, 47.

lack of power, by the fact that I was not able to save everyone. It was my dearest hope, my wish. *I did what I could* and I spared no effort. And I want to thank those who helped me, who assisted me with their advice, who helped me by accompanying me during the pacification campaign, who helped me by intervening where I sent them to intervene, and those who helped me with their prayers.

I thank my family. We spent some very difficult times together, nights that were endless, sleepless nights. Our life was in danger and they comforted me; they encouraged me; they supported me. I thank my wife and my children because they were at my side during these difficult times. *It was a nightmare for everyone, for them and for me.* (Emphasis added.)²⁴

Overall, this narrative framework worked to challenge the idea that the accused had, or could have, participated in *any* violence. More specifically they worked to undermine the prosecution's claims that the accused possessed the necessary intent to be found responsible for committing acts of genocide.

Chaos and Diminished Responsibility

The example concerning Bagambiki above is also evidence of another key narrative trope presented by the defence: the chaotic nature of the violence in 1994 drastically limited how defendants could act. In that example, it was not Bagambiki's actions but rather the *context* of 1994 that meant he could not stop the genocide. Akayesu's defence also utilised this type of narrative to explain why the violence began in Taba even though Akayesu had successfully prevented it for two weeks. Akayesu argued that his actions had been successful when the *context* allowed this—when the violence had been at a manageable level and the population remained loyal to him.²⁵ After 18 April 1994, however, he was overwhelmed by forces from

²⁴ TRA001921/1, 20.

²⁵ Akayesu, with the assistance of other persons, struggled against the Interahamwe and then the reinforcement became unfavourable to Akayesu and they were overwhelmed by the Interahamwe. This witness continues that the killings became widespread between the 23rd and the 24th of April in Taba, because Taba was the only commune that had been spared thus far from the killings. CONTRA001238, 23.

outside the commune and he was no longer able to resist.²⁶ In fact, like Bagambiki, Akayesu becomes a victim of circumstance as the chaos around him, and the Interahamwes' rise to power, rendered him powerless.

This sense of forces coming from 'outside' strongly featured in *Cyangugu* and *Gatete* in a second strand of the chaos argument: the violence was *not* orderly or the result of careful and meticulous planning, but was spontaneous and chaotic, and had been triggered by the RPF's invasion of Rwanda. A defence witness in *Cyangugu* claimed:

Well, in this country where disorder was rife, where there was fighting everywhere, where the RPF was advancing, where infiltrators were being hunted down, *people running helter-skelter, dying of accidents*, people killed at roadblocks, Bagambiki saved as many people as he could. If Mr. Karegyesa [chief prosecutor] had been in that country, would he have been able to do more? (Emphasis added.)²⁷

This suggested that against this outpouring there was little that the defendants could have done to re-introduce peace within the region.²⁸

Defence: Witness, can you tell this Court whether between the 9th of April 1994 and the 12th of April 1994 -- the date when the government fled -- whether the said government was in a position to take any governmental -- plausible governmental action?

Witness: It was impossible for the simple reason that this government was under siege. It was at war. And we realised that as soon as it was installed, the first thing it did was to prepare its flight, and under those circumstance, this flight did not mean that this government was making progress.²⁹

²⁶ ICTR-96-4, Akayesu, *Audio Recording*: Interview of Jean Paul Akayesu in Zambia, 10/04/1996, Tape I, Side A; CONTRA001180, 14-5; CONTRA001207, 31-2; see also CONTRA001208, 34-35; CONTRA001214, 19-20 and 43-4; and CONTRA001217, 50-3.

²⁷ ICTR-99-46, TRA002003/1, [*Cyangugu*] – *Ntagerura et al* – *Redacted Transcript of 18/02/2003*, 18/02/2003, 33.

²⁸ ICTR-99-46, TRA001293/2, [*Cyangugu*] – *Ntagerura et al* – *Redacted Transcript of 22/07/2002*, 22/07/2002, 102; ICTR-00-61, TRA005147/1, *Gatete* – *Redacted Transcript of 09/03/2010*, 09/03/2010, 60; ICTR-00-61-0240/1, 73; and ICTR-99-46, TRA000546/2, [*Cyangugu*] – *Ntagerura et al* – *Redacted Transcript of 20/09/2001*, 20/09/2001, 37, 41 and 44.

²⁹ ICTR-99-46, TRA001277/2, [*Cyangugu*] – *Ntagerura et al* – *Redacted Transcript of 28/05/2002*, 28/05/2002, 55.

This narrative was very closely associated with Lucien Hounkpatin's expert testimony for the defence in *Cyangugu*, which attempted to reduce any grounds for seeing even the faint possibility for individual criminal responsibility within the context of the violence in Rwanda.³⁰ This expert testimony—which the prosecution unsuccessfully tried to bar from the courtroom—alleged that *no one* was responsible for the genocide which was (drawing on 'ethno-psychiatry'—a discipline strongly linked with colonialism) claimed to be the result of the 'collective insanity' that resulted from the death of the father of the nation, Habyarimana.³¹

The *Cyangugu* defence took the chaos narrative even further. They argued that, after the Rwandan army (FAR) had successfully defeated the RPF in a conventional war in 1992, the RPF turned instead to guerrilla tactics.³² In particular, it was alleged that the RPF recruited young Tutsis who were trained in Uganda before being sent back to Rwanda where they were directed to commit acts of terrorism and sabotage.³³ These acts of violence rendered places like Cyangugu as effective 'passive war fronts', producing considerable tension within the region in the build-up to the genocide as the population became increasingly suspicious of each other.³⁴ This meant that when the President's plane was shot down, the built-up tension

³⁰ ICTR-99-46, ICTR-99-46-0460, [*Cyangugu*] – Bagambiki – Ntagerura et al – Prosecutor's Motion for the Exclusion of the Proposed Expert Report and Evidence of Lucien Hounkpatin, 03/07/2002, 2–3.

³¹ *Ibid.*, 2; and ICTR-99-46, TRA001286/2, [*Cyangugu*] – Ntagerura et al – Redacted Transcript of 08/07/2002 – Motion, 08/07/2002, 25 and 36.

³² TRA001851/2, 24–5; ICTR-99-46, TRA001618/02, [*Cyangugu*] – Ntagerura et al – Redacted Transcript of 02/10/2002, 02/10/2002, 80–1; and ICTR-99-46, TRA001619/2, [*Cyangugu*] – Ntagerura et al – Redacted Transcript of 03/10/2002, 03/10/2002, 38–40.

³³ TRA000527/2, 75; ICTR-99-46, TRA001288/2, [*Cyangugu*] – Ntagerura et al – Redacted Transcript of 11/07/2002, 11/07/2002, 32–3 and 46; ICTR-99-46, TRA001800/1, [*Cyangugu*] – Ntagerura et al – Redacted Transcript of 04/11/2002, 04/11/2002, 32; ICTR-99-46, TRA001907, [*Cyangugu*] – Ntagerura et al – Redacted Transcript of 21/01/2003, 21/01/2003, 5–10; and ICTR-99-46, TRA002002/2, [*Cyangugu*] – Ntagerura et al – Redacted Transcript of 17/02/2003, 17/02/2003, 5–6.

³⁴ TRA001907, 8.

spilled over into acts of violence.³⁵ This argument also rendered some of the Tutsis within the region as ‘legitimate’ targets of the violence. This, for instance, implied that Bagambiki and Imanishimwe had been correct in their decision to remove from Karamapaka stadium seventeen persons (later killed) suspected of working with the RPF.³⁶ In some cases the narrative went even further and suggested that some Tutsis brought the violence upon themselves as they attacked Hutus, committed acts of terrorism, and exacerbated tensions as they celebrated the death of President Habyarimana or the arrival of the RPF.³⁷

The majority of these narratives worked to limit the accused’s responsibility for the violence during the genocide. Similar arguments about absent responsibility were presented by the defendants as they argued that their positions within the civil or military administrations did not carry anything like the power or authority that the prosecution alleged, which also lessened the possibility of their successful interventions in 1994. Both Bagambiki and Akayesu in this respect argued that their authority had diminished since the advent of multiparty democracy as they were no longer considered the direct representative of the president within the commune or prefecture; similarly, for Ntagerura this meant that the MRND—his party—was no longer the biggest within the region.³⁸ Both Ntagerura and Bagambiki also argued that Simon Nteiryayo, the MRND chairman for the prefecture, was the most powerful member of the MRND in the region in an attempt to paint themselves in a

³⁵ TRA002000/1, 14; and ICTR–99–46, TRA001912/1, [*Cyangugu*] – *Ntagerura et al* – Redacted Transcript of 11/03/2003, 11/03/2003, 39.

³⁶ TRA001920/1, 25.

³⁷ *Ibid.*, 52–3; and ICTR–99–46, TRA001795/1, [*Cyangugu*] – *Ntagerura et al* – Redacted Transcript of 22/10/2002, 22/10/2002, 48; TRA001618/02, 1. See also ICTR–99–46, TRA001796/1, [*Cyangugu*] – *Ntagerura et al* – Redacted Transcript of 23/10/2002, 23/10/2002, 40; and TRA001909/1, 10–1.

³⁸ ICTR–99–46, TRA000437/2, [*Cyangugu*] – *Ntagerura et al* – Redacted Transcript of 20/02/2001, 20/02/2001, 35; TRA002063/1, 23–6; TRA001907, 9; TRA001918/1, 2–4; CONTRA001207, 12–7; CONTRA001231, 7–34; and TRA000525/1, 32–3.

less authoritative light.³⁹ With these changes, they all contended that it became far harder to ensure the respect and loyalty of the population who as a result increasingly disobeyed their orders.⁴⁰

The most persistent of these narratives came from Imanishimwe.⁴¹ He argued that despite the prosecution's claims, not only was he not closely tied with the Akazu and did not have Colonel Nsabimana as his military 'godfather', but that he was not even in charge of an important camp. Wounded in 1991, he was kept away from the front line and the top posts in the military until he was transferred to Cyangugu—an insignificant station, far away from the front line, that was staffed by the war-wounded and otherwise immobile persons, like him, who were not capable of serving the military in the war with the RPF.⁴² One witness testified as follows:

Defence: You name Captain Kazabavaho, Second Lieutenant Dusenguremyi, and Lieutenant Samuel Imanishimwe as being commanders of the Karambo camps [...]. Was there anything special, peculiar about these three officers?

Witness: The three officers had many common characteristics and characteristics that were peculiar to them. In fact, the Cyangugu camp mainly comprised soldiers who had been wounded at the front. And if my memory serves me right, I think Captain Kazabavaho had scars on his face and also on -- near his ribs. As concerns Dusenguremyi, he was one-eyed, he could only see with one eye. And as regards Samuel, he had sustained or suffered an accident during which a mine exploded as he passed by, and this made him suffer complications in his lower leg.⁴³

³⁹ TRA001277/2, 69–70; and ICTR–99–46, ICTR–99–46, TRA001274/2 [Cyangugu] – Ntagerura et al – Redacted Transcript of 20/05/2002, 20/05/2002, 94–6.

⁴⁰ TRA002000/1, 12–6. The main narrative during *Gatete* in this regard was to allege that Gatete was not one of the ringleaders of the genocide in the Murambi commune, as evidenced by the frequency with which witnesses mentioned other personalities in the region. TRA005152/1, 40; ICTR–00–61, TRA005145/1, Gatete – Redacted Transcript of 10/3/2010, 10/3/2010, 54; ICTR–00–61, TRA005153/1, Gatete – Redacted Transcript of 16/03/2010, 16/03/2010, 42, 61 and 64–6; and ICTR–00–61, TRA005157/1, Gatete, Redacted Transcript of 22/3/2010, 22/3/2010, 53.

⁴¹ See all of his own testimony. TRA001851/2.

⁴² ICTR–99–46, TRA001615/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 25/03/2002, 25/03/2002, 30–3; and TRA001618/02, 77–9. See also ICTR–99–46, TRA001782/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 16/10/2002, 16/10/2002, 28; and ICTR–99–46, TRA001799/1 [Cyangugu] – Ntagerura et al – Redacted Transcript of 30/10/2002, 30/10/2002, 12–7.

⁴³ TRA001619/2, 39–40.

Cyangugu camp was, then, far from being the place where Imanishimwe could effectively orchestrate genocide. It was further argued that Imanishimwe was not even the most senior (and therefore powerful) member of the security forces in Cyangugu as the Gendarme commander, Lieutenant Colonel Bavugamenshi, had a superior rank. It was also Bavugamenshi, not Imanishimwe, who was responsible for order and security, with Imanishimwe additionally claiming that he had no responsibility or authority for the gendarmes—meaning he was not responsible for any of the crimes that they had committed.⁴⁴

Counter-Histories

The defence also constructed ‘counter-histories’, which offered competing understandings of the past to try to undermine the prosecution’s account of how and why the violence occurred. Two types of these counter-histories were presented during the trials: one of the conflict as a whole and the other of violence within the localities, which were similar to the prosecution’s but with minor, but key, alterations that exonerated the accused.

The latter type of counter-history was particularly used by Gatete’s defence, who overall drew on a slightly different strategy when compared to the other trials, which was to argue at a more basic level that *he didn’t do it* and that *he wasn’t there*. The defence did not deny the occurrence of violence, but simply denied that it had anything to do with Gatete, who was never at any of the locations where the violence allegedly occurred. Gatete’s defence re-constructed the prosecution’s narratives to a very detailed level, including the build-up to the

⁴⁴ TRA001618/02, 76; TRA001796/1, 37; TRA001851/2, 33–6 and 48–53; TRA001907, 28; and ICTR–99–46, TRA001781/1, [*Cyangugu*] – *Ntagerura et al* – *Redacted Transcript of 15/10/2002*, 15/10/2002, 2–3.

violence, the violence itself, and who were the leaders of the particular attacks, but simply removed Gatete from the picture altogether. This was the case for their accounts of the violence at both Mukarange and Kiziguro parish, where the overlap with the prosecution's account was most striking.⁴⁵ Similar counter-histories were also constructed during *Akayesu*, and in *Cyangugu*, as can be seen in the narratives noted above about Bagambiki's attempted intervention at the various massacre sites.⁴⁶ However, rather than whether or not the accused was present at a site, these accounts worked to challenge the prosecution's interpretation of the *meaning* of their presence.⁴⁷

The second type of counter-history used tied in with the chaos argument above, offering a different account of the overall violence in Rwanda, which placed the RPF as the sole aggressor. Throughout this history, the Hutus were peace-loving democrats and the Tutsis (thinly disguised as the RPF) were war-mongering despots. This placed the Tutsis, not the Hutus, as being responsible for the worst period of undemocratic rule of the country during the Tutsi monarchy, where the Hutus were rendered as second-class citizens—despite their majority status. As such, the Hutu Revolution in 1959 was presented as a democratic

⁴⁵ Mukarange: ICTR-00-61, TRA005158/1, *Gatete – Redacted Transcript of 17/03/2010*, 17/03/2010, 11; TRA005157/1, 12–21. Kiziguro: TRA005145/1, 39–49; ICTR-00-61, CONTRA018748, *Gatete, Redacted Transcript of 11/3/2010*, 11/03/2010, 24; and ICTR-00-61, TRA005154/1, *Gatete – Redacted Transcript of 15/03/2010*, 15/03/2010, 70–2. See also TRA005147/1, 54 and 73.

⁴⁶ A good example of these types of narratives in *Akayesu* was the attempt to explain why Akayesu had been present in a neighbouring commune, where the prosecution alleged that he was searching for Emphrem Karangwa in order to kill him. Akayesu responded that he had gone there to find some more material so that he could make some additional police uniforms for some new recruits. CONTRA001231, 88–90. An example from Imanishimwe's case would be the acceptance that soldiers committed acts of violence, but these were simply some minor disciplinary offenses, *not* the systematic rounding up and killings of Tutsis. ICTR-99-46, TRA001993/2, [*Cyangugu*] – *Ntagerura et al – Redacted Transcript of 22/01/2003*, 22/01/2003, 14.

⁴⁷ One particularly successful counter-history here was Bagambiki's account of the extraction of the refugees from the Kamarampaka stadium, noted above. Here, whilst acknowledging the risk involved, he responded that his actions were driven both out of legitimate concern, but also because if he did not act on the suspicion that there were RPF persons within the stadium then the militia waiting outside would have massacred all the refugees. TRA001920/1, 25–8; TRA001781/1, 27; and TRA001800/1, 29–30. Following the extraction, in opposition to the prosecution's narrative where Bagambiki and Imanishimwe supervised the killing of these refugees, the defence alleged that whilst they were not present the militia waiting outside the stadium captured and killed the refugees. TRA001781/1, 28.

revolution against a small clique trying to cling to power. Even then, the 40 years of a single party authoritarian state were presented as being ‘democratic’ because they were ruled by the majority of the population (the Hutu) and the quota system, which ensured that the Hutus retained the majority of the most influential positions within the country, was presented as fair and just.⁴⁸ Habyarimana’s second republic was, the defence argued, a period when tolerance was a cornerstone of the country’s politics.⁴⁹ As one of the defence’s witnesses claimed:

Well, Counsel, I would say that with the advent of the second republic President Habyarimana contributed to better understanding amongst Rwandans. The goals that were sought after, the goals sought by his policy which were peace, unity, development, were achieved for all Rwandans: Hutus, Tutsis and Twa. All Rwandans lived in symbiosis in -- and where true development was taking place.⁵⁰

The defence, however, claimed that the RPF (Tutsis), who were an international force supported by the Ugandan military and government, were unwilling to accept reintegration by democratic means and were hell-bent on regaining power and re-establishing minority rule.⁵¹ This drive for power at all costs produced a counter-cycle of violence to the prosecution’s: in the build-up to 1994, each time the Rwandan government secured some semblance of peace the RPF re-commenced hostilities, and each time they did chaos and violence descended upon Rwanda due to spontaneous outpourings by normal Rwandans.⁵² One witness during *Cyangugu* recalled:

So, in summary, it wasn't something that was planned, thought out, supported by the authorities and particularly by the government, but, rather, this was violence that broke out each time there were attacks by the RPF, especially in 1991 -- January 1991 when there was the attack at Ruhengeri; and on the 8th of February as well 1993, when there was a massive RPF attack; and lastly in June, July 1992 when the

⁴⁸ TRA001293/2, 50–1.

⁴⁹ *Ibid.*, 50–51; and TRA002003/1, 2.

⁵⁰ TRA002002/2, 64.

⁵¹ TRA001851/2, 19; TRA001610/2, 26–7; TRA001618/02, 78–9; and TRA001293/2, 46 and 48.

⁵² ICTR–99–46, TRA000130/01, [*Cyangugu*] – *Ntagerura et al* – *Redacted Transcript of 20/11/2000*, 20/11/2000, 22–3; TRA001610/2, 38–9, 67–8, and 77; TRA002003/1, 5–6; and TRA001912/1, 33.

RPF attacked -- and, if you will -- occupied about nearly the whole préfecture of Byumba⁵³

This was the cycle of violence that ultimately led to the chaos and outpouring of emotion in 1994, noted above.⁵⁴ More than this, it was the RPF and *not* the interim government, the defence claimed, that were responsible for the perpetration of systematic violence, which also continued after they took power.⁵⁵ This narrative was particularly emphasised by Gatete's defence, where it also became more personal as defence witnesses repeatedly noted the death of several of Gatete's family at the hands of the RPF.⁵⁶

These narrative frameworks challenged the prosecution's case head on, providing an alternative account that shifted the entire explanation for the violence in an attempt to introduce doubt over the credibility of the prosecution's witnesses. Additionally, the broader counter-history played a role in supporting the chaos argument, which worked to diminish the responsibility of the accused. These accounts also sought to undermine the legitimacy of the prosecution *as a whole*. This was because the prosecution had explicitly charged the accused under Article 3 of the statute, the 'additional protocol 2' of the Geneva Convention, a provision that explicitly only covered conflicts of a 'non-international' nature.⁵⁷ If the defence could establish the international nature of the conflict, by focusing on the role of countries like Uganda, then this would effectively render the prosecution's war crimes charge obsolete.

⁵³ TRA001293/2, 105.

⁵⁴ TRA000130/01, 22–3.

⁵⁵ TRA001293/2, 111; ICTR–99–46, TRA001621/2, [*Cyangugu*] – *Ntagerura et al* – *Redacted Transcript of 08/10/2002*, 08/10/2002, 40–1; and TRA002003/1, 5–6.

⁵⁶ ICTR–00–61, ICTR–00–61–0081, *Gatete – Defence Response to Prosecution Motion for Judicial Notice of Facts of Common Knowledge*, 07/08/2009, 5; CONTRA018748, 11; ICTR–00–61, TRA005150/1, *Gatete – Redacted Transcript of 04/03/2010*, 04/03/2010, 30; TRA005148/1, 62, 63 and 68; and ICTR–00–61, TRA005507/2, *Gatete – Redacted Transcript of 10/11/2009*, 10/11/2009, 79.

⁵⁷ S/1994/1125, 20.

The Conditions of Truth

When explaining *why* these narrative frameworks appeared as they did, then a number of the factors that fell under the rubric of the ‘conditions of truth’ in Chapter Two reappear. As with the prosecution, law’s imprint was firmly left on these accounts. This was most clearly seen in the first subsection where the defences’ narrative structures, and hence the witnesses’ testimony, attempted to produce accounts that specifically tried to undermine the prosecution’s allegations that the accused possessed the necessary special intent to be found guilty of genocide.⁵⁸

These narratives also, like the prosecution’s, emphasised a particular association between levels of agency and perpetratorhood and victimhood. Whilst the prosecution throughout their accounts constructed an understanding of the accused as hyper-conscious and rational perpetrators seeking power at all costs, and with this attributing a considerable amount of agency to them, the chaos argument discussed above *removed* any sense of agency; the accused were simply unable to act any differently and therefore could not be punished. Tellingly, these narratives drew on the same discursive understanding of violence that featured in the UN’s discussions during the genocide (discussed in Chapter One), which, like here, led to the belief that it was impossible to ‘do something’ in order to stop the violence. Similarly, within some of these narratives—particularly concerning Bagambiki and Akayesu—the defendant’s lack of agency rendered them ‘*victims*’ of the violence as they

⁵⁸ The same principle underpinned the defences’ attempts to prove that both Tutsis and Hutus were the targets of violence, because if this were the case then it would at least weaken the prosecution’s claim that what occurred was genocide. See for example, TRA002001/1, 22–3; and TRA002003/1, 58.

were incapable of influencing the events that happened *to them*. Finally, as was discussed in the chaos section, the defence presented the Tutsis within Cyangugu as potential threats due to the acts of terrorism and sabotage for which they were allegedly responsible. This attributed agency to these actors, which both legitimised certain forms of violence against them and prevented them from being seen as victims. Therefore, these accounts, like the prosecution, were constructed in a way that served legal ends, because of the law's way of accounting for the social world.

However, these accounts, like those of the prosecution, also had a value *beyond the law*. The courtroom provided a space for witnesses, as argued, where counter-hegemonic narratives of violence could be heard.⁵⁹ As at other war crimes trials, such as *Zundel* in Canada, at points these offered a problematic interpretation of the violence (such as that the Tutsis had deserved or brought the violence upon themselves).⁶⁰ But at other points these offered a moment whereby acts of violence, and complicit partners in that violence, could be highlighted where they would otherwise have been ignored. This captured the violence that was inflicted by the RPF and the role of international actors, such as Uganda, in contributing to the violence. There was the sense, moreover, that the defence deliberately constructed some of these narratives in order to make the record reflect a fuller history of the violence in Rwanda. During *Akayesu* the defence argued:

This trial, above all, is an opportunity for us to be heard, or for you to be heard, rather, for us to hear the protests of our conscience and to bear testimony to history, because history is always incomplete without the testimony of the vanquished.⁶¹

⁵⁹ Simpson, *Law, War and Crime* (see Intro., n. 18), 90–4.

⁶⁰ Douglas, *Memory of Judgement* (see Intro., n. 11), 226–57.

⁶¹ ICTR–96–4, CONTRA001236, *Akayesu* – *Transcript of 23/3/1998*, 23/03/1998, 8.

In a similar way to which the prosecution's witnesses were able at moments to reclaim an understanding of the genocide, the defence witnesses were also able to challenge the hegemonic account of violence being produced at the Tribunal, and in Rwanda, where the only violence of concern was the genocide and the only victim, the Tutsis.

Interventions

Beyond offering alternative explanations about the violence in Rwanda, the defence also attacked the prosecution's case in two other ways. The first was in cross-examining the witnesses in an attempt to undermine their credibility, which would mean that their testimony could not contribute towards establishing the accused's guilt. The second was by attempting to challenge the very basis of the prosecution's case as it was being constructed, in order to limit what evidence could enter the courtroom.

Cross-Examination

The defence drew on a variety of different tactics during cross-examination to undermine the credibility of the prosecution's witnesses, including: pressing the witnesses over any change in their evidence between their in-court testimony and their pre-trial statement (perhaps the most commonly used tactic);⁶² trying to pull out even the smallest contradictions in their

⁶² For some examples see: ICTR-99-46, TRA000122/01, [Cyangugu] – Ntagerura et al – Redacted Transcript of 09/10/2000, 09/10/2000, 87; ICTR-99-46, TRA000251/2, [Cyangugu] – Ntagerura et al – Redacted Transcript of 18/01/2001, 18/01/2001, 73; ICTR-99-46, TRA000434/2, [Cyangugu] – Ntagerura et al – Redacted Transcript of 14/02/2001, 14/02/2001, 110; ICTR-00-61, TRA005490/2, Gatete – Redacted Transcript of 21/10/2009, 21/10/2009, 27–8; ICTR-00-61, TRA005491/2, Gatete – Redacted Transcript of 03/11/2009, 03/11/2009, 17–21; ICTR-96-4, CONTRA001179, Akayesu – Transcript of 21/1/1997,

evidence to suggest that the witness was lying;⁶³ and questioning the plausibility of a witness's narrative.⁶⁴ The latter technique often appeared to draw on the extreme nature of genocide, and *witnessing genocide*, in order to imply that what the witness had claimed to have experienced could not possibly have been true. The following exchange is from *Akayesu*:

Defence: How much time did you spend at the bureau communal?

Witness: Approximately two weeks.

Defence: Before seeking refuge at the bureau communal you knew that people were being killed there and why did you go there in spite of that?

Witness: I sought refuge there because I knew that people who were going there were killed by bullets. I didn't want to be killed by machetes and clubs.

Defence: So you had a preference to be killed by bullet?

Witness: I preferred to be killed by bullet because I thought that it was more painful to be killed by clubs and hoes.⁶⁵

During cross-examination witnesses were also targeted *en masse* as the defence argued that 'syndicates' (often accused of being led by survivor organisations like *Ibuka*) had forced the witnesses to lie.⁶⁶ In *Gatete* this narrative took on a slightly different form as the defence

21/01/1997, 100–2; and ICTR–96–4, CONTRA001198, *Akayesu – Transcript of 6/2/1997*, 06/02/1997, 220–60. In one particularly damning instance the witness was asked to read out one of their pre-trial statements and they changed it in order to match their in-court testimony. ICTR–00–61, TRA005537/2, *Gatete – Redacted Transcript of 12/11/2009*, 12/11/2009, 78.

⁶³ ICTR–00–61, TRA001643/1, *Gatete – Redacted Transcript of 20/10/2009*, 20/10/2009, 44–5; ICTR–96–4, CONTRA001197, *Akayesu – Transcript of 5/2/1997*, 05/02/1997, 98–9; and CONTRA001190, 107–9. Sometimes this tactic made it seem almost as though the defence were trying to create contradictions just to annoy the witnesses. For this see the prosecution's re-examination of Witness S, CONTRA001197, 116–61; and Senior Reviser (2015).

⁶⁴ ICTR–99–46, TRA000252/2, [*Cyangugu*] – *Ntagerura et al – Redacted Transcript of 22/01/2001*, 22/01/2001, 7–8; ICTR–99–46, TRA000443/1, [*Cyangugu*] – *Ntagerura et al – Redacted Transcript of 02/05/2001*, 02/05/2001, 75–6; ICTR–99–46, TRA000540, [*Cyangugu*] – *Ntagerura et al – Redacted Transcript of 13/09/2001*, 13/09/2001, 23–4; ICTR–96–4, CONTRA001182, *Akayesu – Transcript of 24/1/1997*, 24/01/1997, 51–3; and ICTR–96–4, CONTRA001222, *Akayesu – Transcript of 23/10/1997*, 23/10/1997, 7.

⁶⁵ CONTRA001222, 7–8. See also ICTR–96–4, CONTRA001223, *Akayesu – Transcript of 24/10/1997*, 24/10/1997, 3; ICTR–96–4, CONTRA001224, *Akayesu – Transcript of 27/10/1997*, 27/10/1997, 53; ICTR–96–4, CONTRA001226, *Akayesu – Transcript of 31/10/1997*, 31/10/1997, 4; ICTR–99–46, TRA000217/1, [*Cyangugu*] – *Ntagerura et al – Redacted Transcript of 24/10/2000*, 24/10/2000, 39; ICTR–99–46, TRA000253/1, [*Cyangugu*] – *Ntagerura et al – Redacted Transcript of 23/01/2001*, 23/01/2001, 60; and TRA000434/2, 109.

⁶⁶ CONTRA001238, 1–17; ICTR–96–4, CONTRA001218, *Akayesu – Redacted Transcript*, 10/2/1998, 79–81; CONTRA001218, *Akayesu – Audio Recording: Interview of Jean Paul Akayesu in Zambia*, 10/04/1996, Tape I,

argued that the witnesses had testified as a result of a defamation campaign that had been orchestrated against Gatete *before* the genocide had begun, which made the witnesses susceptible to malicious rumours of Gatete's involvement in the genocide later on.⁶⁷

'Perpetrator' witnesses were particularly stringently cross-examined, and even more so when they had participated in a crime charged within the indictments. These witnesses were attacked at both a generic level, which targeted the credibility of all perpetrator witnesses, and at a more individualised level. In the following cross-examination, the defence tried to establish that the prosecution's witness lacked credibility due to the level of their involvement in the genocide, which meant they were both of dubious character and that they had a vested interest in implicating others:

Defence: Witness LAI, during your testimony here before the Court you said that in 1994 you were so powerful that just by looking at a Tutsi, the Tutsi could die. My question witness LAI is the following, did you participate in killings in Bisesero?

Witness: Yes, Counsel.

Defence: Did you also participate in the killings in Mimbilizi?

Witness: Yes.

Defence: Did you participate in the killings in Kamembe?

Witness: Yes, I was in Kamembe but I was looking for the Tutsi and accomplices. Some of them even died. We wanted to provide protection to the government which had taken refuge there.

Defence: Thank you, Witness LAI. Did you participate in the killings in Shangi?

Witness: Yes, Counsel.

Defence: Did you also participate in the killings in Gishoma commune?

Witness: Yes, Counsel [...].

Defence... Witness LAI, how many people did you kill or how many people did you contribute to killing?

Side A; and ICTR-99-46, TRA001283/2, [Cyangugu] – Ntagerura et al – Redacted Transcript of 03/07/2002 – Motion, 03/07/2002, 65.

⁶⁷ TRA001643/1, 7–8.

Witness: I killed many. I do not know the exact number. At this juncture I think it is time for me to ask for pardon for what I did. I did a lot of harm, that is all I can say.⁶⁸

[....]

Defence: Did you denounce the accomplices with whom you committed your crimes in 1994? The questions is very simple?

Witness: Yes.

Defence: How many accomplices did you denounce?

Witness: In my file, it's 125 persons that I mentioned.

Defence: Is it correct Witness LAI that before you made your confession you met with a person from the Prosecutor's office who told you that your confession would lead to a lighter sentence?

Witness: No, nobody told me that. I made my confession before the authorities from my own initiative. It was my conscience which told me to do that. I believe that I had to ask for forgiveness before God, before the Rwandan people and before the international community.⁶⁹

During the closing arguments at *Cyangugu* the defence effectively called for the judges to throw out *all* perpetrator evidence, claiming that these were morally dubious characters that were displacing their responsibility onto others, noting additionally that it was not a coincidence that not a single victim (i.e., a trustworthy witness) had directly implicated the accused.⁷⁰

Although the centrality of the cross-examination within the overall trial strategy appeared more significant for the defence than the prosecution (the defence, after all, only had to introduce reasonable doubt about the prosecution's case), the prosecution also drew on these techniques when cross-examining the defence's witnesses. The prosecution, however, used two additional tactics that sought to question the *value* of a witness's testimony. The first challenged the usefulness of negative testimony—that something did not happen or that the

⁶⁸ ICTR-99-46, TRA000751/01, [*Cyangugu*] – *Ntagerura et al* – Redacted Transcript of 25/09/2001, 25/09/2001, 23–4.

⁶⁹ TRA000751/01, 32–3.

⁷⁰ TRA002063/1, 27–30.

accused was not at a particular massacre—as they argued that it was impossible for one witness to see everything that had occurred. This was particularly prominent in *Gatete*.⁷¹ In closing the prosecution argued:

You listened to 27 witnesses for the Defence. Most of them came to tell you that they didn't see the Accused; they didn't hear him; and they don't know where he was at the time of the crimes. It's a distinctive feature of this case that not one of the Defence witnesses ever said where the Accused actually was during the crimes.⁷²

The second aspect (and one used with surprising regularity) was to not cross-examine the witness at all.⁷³ This seemingly either implied a witnesses' irrelevance for the case or that *their own testimony* had undermined itself to the extent that the prosecution's work was already done.

As the Tribunal progressed changes both outside and inside of the Tribunal affected how cross-examination proceeded. In particular, this process was influenced by *Gacaca* records being made available to the parties, which offered both new information about particular incidents and provided additional witness statements that had been made by ICTR witnesses at *Gacaca* hearings.⁷⁴ This offered a chance for both prosecution and defence (although this was particularly drawn on by the defence) to further undermine the witnesses' testimony during cross-examination by showing that a witnesses had provided accounts at *Gacaca* which conflicted with their ICTR testimony.⁷⁵ This change resulted from the Rwandan government's increased cooperation with the Tribunal and also a decision in *Nchamihigo* where the judges ruled that the prosecution had an *affirmative* duty to aid the defence in

⁷¹ For examples see: TRA005150/1, 56. CONTRA018674, 35; TRA005152/1, 79; and TRA005154/1, 101.

⁷² ICTR-00-61, TRA005592, *Gatete – Redacted Transcript of 08/11/2010*, 08/11/2010, 2.

⁷³ For an example see: TRA002000/1, 26.

⁷⁴ For example, see: TRA005592, 52–3.

⁷⁵ ICTR-00-61, TRA005458, *Gatete – Redacted Transcript of 22/10/2009*, 22/10/2009, 33; TRA005507/2, 87; and TRA005152/1, 21–2.

acquiring Gacaca records.⁷⁶ These changes influenced the way in which the accounts of violence were produced during the trials. First, these new records could, as suggested above, result in a witness's credibility being undermined.⁷⁷ Second, these also affected which witnesses were called to testify. During *Seromba*, for instance, the prosecution dropped its 'star witness', the bulldozer driver who demolished the Nyange Church, after reading ten of his prior *Gacaca* records.⁷⁸

The tactics employed during cross-examination, particularly by the defence, also appeared to have a secondary purpose of trying to unnerve and frustrate the witness in order to make them react in a manner that suggested they lacked credibility. This particularly brought the tensions between the Tribunal's interests into stark relief. Attempts to unnerve the witnesses drastically contrasted with the way in which the Tribunal was supposed to, in part at least, function as a site for victims. Several ICTR witnesses interviewed by Redress noted the negative effects that the cross-examination had on them, stating that this at times made them feel like they were the ones being accused of committing genocide.⁷⁹ Indeed, the defences' main priority was, understandably, defending their clients' interests and as a consequence there was little that was off limits when they tried to undermine the witnesses' credibility. As Jenia Turner noted, whilst some of the defence counsels saw that trials could achieve extra-

⁷⁶ ICTR-00-61-0131, *Gatete – Motion for Disclosure of Rwandan Judicial Records Pursuant to Rule 66 (A) (ii) of the Rules of Procedure and Evidence*, 02/11/2009, 3. There is also evidence of the effects of this during *Gatete* where the prosecution was requested to assist the defence in obtaining the most recent Gacaca records – although this was always presented as a 'voluntary' action rather than a direct order by the court. ICTR-00-61, TRA005505/2, *Gatete – Redacted Transcript of 14/10/2009*, 14/10/2009, 3–5.

⁷⁷ ICTR-00-61-0240/1, 48–9 and 85.

⁷⁸ George Townsend, 'Use of Domestic Court Records', *ICTR Legacy Symposium*.

⁷⁹ Redress, *Survivors and Post-Genocide Justice in Rwanda*, 57. Some witnesses clearly also felt that the examination-in-chief was an intimidating event. In this following extract, Judge Aspegren had to intervene in order to try to get the witness to cooperate with the prosecution:

Justice Aspegren: Do you understand that you, yourself, are not accused? You are not suspected of any crimes?

Witness: Well, I don't know of any crime that I can be accused of. ICTR-96-4, TRA001178, *Akayesu – Transcript of 14/1/1997*, 14/01/1997, 162.

judicial aims, such as constructing a history about the violence, they also said that they would without question do what they had to in order to defend their client, even if this meant questioning witnesses in a way that might re-traumatise them.⁸⁰ One defence lawyer said: ‘You can’t think of whether you’re going to hurt that person’s feelings; you should represent your client in the best way.’⁸¹ At points this put the legal and extra-judicial goals of the court in direct opposition to each other as the chance of the court acting as a site of healing, reflection and/or catharsis were undermined by the pursuit of legal goals. This led to some particularly distasteful and deeply insensitive comments. One particularly serious example of this came in the *Akayesu* closing when the defence argued in reference to Witness J’s testimony concerning the rape of her six-year-old child:

Now, we are wondering, we are saying here, the defence, that the fantasy of this witness may be of interest to psychologists and not justice and not legal lawyers, and this is why we are saying that we need to look at Mr. Akayesu and that we need to remove him from this kind of testimony.⁸²

Attempts were made, however, to try to protect witnesses from some of the negative effects of cross-examination. Both the prosecution and the defence were often brought to heel if their questions seemed to be insensitive to what the witnesses had been through, as the notion of the victims’ rights came to play a role in determining how the court constructed its narratives.⁸³ During one cross-examination, the prosecution requested the bench to intervene:

My Lords, I’m seeking protection for the witness from Counsel because we must recall the witness is being asked to recall or recount very tragic events in his lifetime, and as such be protected from cross-examination that doesn’t seem to lead us anywhere [...].⁸⁴

⁸⁰ Turner, ‘Defense Perspectives’ (see Intro., n. 36), 567–9.

⁸¹ *Ibid.*, 569.

⁸² CONTRA001238.

⁸³ ICTR–99–46, TRA001785/1, [*Cyangugu*] – *Ntagerura et al* – *Redacted Transcript of 01/10/2002*, 01/10/2002, 73. For an example of where this ruling leads to a restriction on the cross-examination see: TRA001785/, 75. TRA000252/2, 94; ICTR–96–4, CONTRA001183, *Akayesu* – *Transcript of 15/1/1997*, 15/01/1997, 140; CONTRA001186, 142; and ICTR–99–46, TRA000129/1, [*Cyangugu*] – *Ntagerura et al* – *Redacted Transcript of 26/10/2000*, 26/10/2000, 81–2.

⁸⁴ ICTR–99–46, TRA000124/01, [*Cyangugu*] – *Ntagerura et al* – *Redacted Transcript of 10/10/2000*, 10/10/2000, 31 and 36. See also, ICTR–99–46, TRA001922/1, [*Cyangugu*] – *Ntagerura et al* – *Redacted*

The same was also true of perpetrator witnesses. Here, interventions tried to prevent the counsels from asking questions that could potentially produce evidence that could incriminate the witness in future proceedings against them.⁸⁵ The defence counsels and judges appeared to, in particular, be willing to intervene when the witness on the stand was an ICTR defendant and it was feared that the cross-examination was in danger of producing incriminating evidence that might be used against the witness at their own trial, hence undermining their right to a fair trial.⁸⁶ This shows that the rights of the various actors in the courtroom influenced how the trials progressed and also how the court's account of violence was to unfold, as this limited the ways in which the defence and prosecution could manipulate the witnesses' testimony. It was these types of rules—which concern themselves with far more than the veracity of a statement—that give legal archives like the ICTR's their distinct quality.

However, it was far from clear that these interventions were motivated, first and foremost, by a concern for the witnesses' wellbeing. For underneath these interventions was also a *legal* aim to limit potentially damaging testimony from entering the courtroom. The defence, then, were keen to stop the prosecution's wide-ranging enquiries into the perpetrator witnesses background, because this could reduce their credibility and potentially also introduce additional incriminating evidence. Moreover, as the above also demonstrated, these measures were largely insufficient and there was clearly a sense that there was a *limit* to which the

Transcript of 03/04/2003, 03/04/2003, 11. This did not succeed in eradicating insensitive questioning at the Tribunal. 'Witness LCF, can you tell this Court what justifies the fantasy of dressing [your father's dead body], which is already clothed, with another pair of shorts?' ICTR-99-46, TRA000399/1, [*Cyangugu*] – *Ntagerura et al* – *Redacted Transcript of 21/05/2001*, 21/05/2001, 15.

⁸⁵ TRA001619/2, 25–27; ICTR-99-46, TRA000873/2, [*Cyangugu*] – *Ntagerura et al* – *Redacted Transcript of 18/03/2002*, 18/03/2002, 40–65.

⁸⁶ ICTR-99-46, TRA001620/2, [*Cyangugu*] – *Ntagerura et al* – *Redacted Transcript of 07/10/2002*, 07/10/2002, 25–9. This was also true when the prosecution cross-examined the defendants in their own trial. See cross-examination of Ntagerura: TRA001785/1, 75. See also TRA002003/1, 6 and 53.

witness's needs could be taken into consideration. As Judge Aspegren reminded one witness who had refused to cooperate with the defence:

Please, I would like to make a point of clarification. Can you tell the witness that she is obliged to respond to all the questions put to her. She should not forget that she has taken the oath to tell truth, only the truth, and nothing but the truth and we have, up to this time, respected her age. She probably is still under the shock of what she saw, what she witnessed. We are very patient. But we do not want her to abuse this, either. Please listen. We respect her age, but it is not polite for her to question the Tribunal and the lawyers. The defence counsel has a right to put questions to her. It is her duty to answer the questions. She has to have the patience and respond to questions put to her. I hope I'm not going to have to warn her once again. This will be the last time.⁸⁷

This, along with the defence's acknowledgement that their tactics could undermine the integrity of the witnesses, suggests that there was an acceptance of the potential *incompatibility* of the court's and witnesses' needs.⁸⁸ Importantly, when these were in tension the court's priorities were to override the witnesses'.⁸⁹

Contesting the Parameters of the Case

⁸⁷ CONTRA001183, 143.

⁸⁸ This was also captured in a number of interviews I conducted where there was almost a resigned acceptance that there was, to a degree, an incompatibility with the witnesses and Tribunals needs and expectations. Member of the ICTR Victim and Witness Support (2015), (Arusha, Tanzania: June); and Senior Investigator (2015).

⁸⁹ This was even apparent in this following statement by Judge Khan, which expressed his concern and support for the witness and their wellbeing:

Mr President: Are you feeling better now?

The Witness: Yes, I feel well now.

Mr President: Let me take this opportunity to convey the Court's concern — not concern, the Court's sympathy with the position you find yourself in. — Regrettably, some of the things you will be asked are not nice to remember. They're not — they're bad memories. They are things that you went through which are better forgotten. But we are looking for something, which is elusive, called the truth. And in the search for the truth we ask everybody to make a sacrifice, including you, to make the sacrifice to live through situations that were very bad and to recollect bad memories.

So, do not feel bad or distressed when counsel seeks to ask you to recount, because if you don't recount and you — of all the people in this room, it is only you who was there. So you are the only one who knows what the truth is. And if you don't tell us we will never get to it.

So, please understand our position and understand the position of counsel as she asks you questions. After she has finished, another counsel on this side will also ask you questions. And in the asking of questions, they are trying to look for the truth, which is important because without it we cannot get justice. And our job here is to do justice.

ICTR-00-61, CONTRA018137, *Gatete – Redacted Transcript 04/11/2009*, 04/11/2009, 45.

The defence deployed two other tactics during the cases under examination. The first was a pre-emptive attack against the witnesses' testimony where they proactively intervened to limit the prosecution witnesses' testimony from being given at all. This was very much, then, the defence trying to *prevent records from being added to the archive*. The second technique used was challenging the very validity and *legality* of the prosecution's case either in whole or in part.

First, the defence would, where possible, intervene to stop witness testimony when they deemed that they had not been put on notice of the allegations being led. For example, as noted in Chapter Three, during *Cyangugu*, the defence intervened as Witness LBH began to tell the court how on a number of occasions Interahamwe, under the supervision of Bagambiki and Imanishimwe, took women from Kamarampaka stadium and raped them:⁹⁰

Mr So'o [Defence counsel for Imanishimwe]: Mr President, Your Honour. The Defence is rather worried that these matters of rapes are put on record because the rapes do not appear in the indictment served on us. So we feel rather concerned that they are being included in the record [...].⁹¹

As aforementioned, the prosecution argued in response that the crime had been charged in the indictment because the defendants had been accused of committing genocide at the Kamarampaka stadium, and that the *Akayesu* trial had previously established that rape could be an act of genocide. This, alongside their opening statement that had explicitly stated that Bagambiki was responsible for rape within Cyangugu (and the withdrawn amended indictment) had, the prosecution argued, put the defendants on notice for this charge.⁹² The

⁹⁰ ICTR-99-46, CONTRA002340, [*Cyangugu*] – *Ntagerura et al* – *Redacted Transcript of 13/02/2001*, 13/02/2001, 88–90.

⁹¹ *Ibid.*, 89.

⁹² During the opening statement the Prosecution stated: 'Many witnesses will say that they saw him committing or allowing other individuals to commit other acts of violence against Tutsis especially against women, Tutsi

judges rejected this argument, stating that rape was a distinct material act that the prosecution had to plead in the indictment, and this testimony was consequently erased from the trial's record.⁹³ During the trial, after another witness referred to sexual violence, the defence requested that the judges remove the reference from the record. Consequently, the transcript for that session read:

Witness: There were also a few Interahamwe who lived in that house, the Interahamwe who I mentioned whom [sic] came to select people. There were also girls who were brought into that building by gendarmes. The gendarmes would select them from among the refugees from the camp [DELETED TEXT].⁹⁴

The Judges removed any doubt about the *irrelevance* of sexual violence when they ruled:

Just before we start I just wanted to make one issue very clear. Near the end of the proceedings yesterday, Mr. So'o pointed out to us that the witness, in giving evidence, had made some reference to the word 'rape', and he had asked us to have it expunged from the record. Of course, it would have meant going back after many hours of testimony to determine where that word appeared, and at the time I indicated that we would not pay any attention to that. But just to have it quite clear: What is meant is that there is no charge of rape before the Court. The Court is, therefore, not going to pay any attention to that word. We are not going to allow it to influence us in any way in arriving at our decision. So, we just want it to be clearly understood. We are not going to be influenced by that word being on [...] the record. Because we are not taking that into account, and we are not going to be influenced by it in any way. I just want the record to clearly indicate that.⁹⁵

The defence also directly contested the validity of the prosecutions' cases either in whole or in part. This often happened during the pre-trial stage, where the defence lodged preliminary motions that challenged prosecution's indictments, which frequently resulted in the judges ordering the prosecution to amend the indictment in order to add greater specificity and detail into the charges and set out the material facts with greater clarity. This affected each of the

women who were every day kidnapped so that they would be raped.' ICTR-99-46, TRA000207/01, [Cyangugu] – Ntagerura et al – Redacted Transcript of 18/09/2000, 18/09/2000, 53.

⁹³ ICTR-99-46, TRA000433/2, [Cyangugu] – Ntagerura et al – Redacted Transcript of 14/02/2001 – Decision, 14/02/2001, 11–3.

⁹⁴ ICTR-99-46, TRA000436/2, [Cyangugu] – Ntagerura et al – Redacted Transcript of 19/02/2001, 19/02/2001, 25.

⁹⁵ TRA000437/2, 1–2.

trials highlighted here, and with these changes the boundaries that were to be imposed on the witnesses' testimonies became more tightly drawn.⁹⁶ In Ntagerura's case, for instance, this meant that the prosecution was forced to add greater specificity as to who it was that Ntagerura allegedly conspired with and also the dates and locations of the criminal acts Ntagerura was charged with. Here the judges argued that the prosecution's claim that an event, for instance, happened between 1 January and 31 July 1994 was (unsurprisingly) insufficiently precise.⁹⁷ This, as will be shown in the following chapter, could have a significant impact on outcome of a case and therefore on the final account of violence produced at each trial.

Finally, the defence also retrospectively challenged the prosecution's case *prior* to commencing their own under Rule 98 *bis*. This provided the defence with an opportunity after the prosecution's case had closed to argue that due to the deficiencies of the prosecution's evidence that, for certain aspects of the indictment, they had no case to answer. For example, in *Cyangugu*, Imanishimwe's defence lodged a Rule 98 *bis* motion that argued there was no case to answer for the conspiracy charge because the prosecution had failed to produce *any* evidence of when the conspirators (the three accused in the case) had met and

⁹⁶ ICTR-96-4, ICTR-96-4-0028, *Akayesu – Inter-Office Memo Transmitting a Brief in Response to a Preliminary Motion*, 04/09/1996; ICTR-96-4, ICTR-96-4-0531, *Akayesu – Decision on the Preliminary Motion Submitted by the Prosecutor for Protective Measures for the Witnesses*, 27/09/1996; ICTR-96-4, ICTR-96-4-0160, *Akayesu – Decision on the Preliminary Motions Presented by the Prosecution and the Defence*, 17/02/1997; ICTR-96-10, ICTR-96-10A-0072, *Ntagerura – Brief in Response to the Preliminary Motions*, 29/07/1997; ICTR-96-10, ICTR-96-10A-0208, *Ntagerura – Decision on the Preliminary Motion Filed by the Defence Based on Defects in the Form of the Indictment*, 28/11/1997; *Prosecutor v. Emmanuel Bagambiki*, Case No. ICTR-97-36 (hereafter ICTR-97-36), ICTR-97-36-0039/1, *Imanishimwe Preliminary Motions*, 28/01/1998; ICTR-97-36-0043, *Preliminary Motions*, 18/02/1998; ICTR-97-36, ICTR-97-36-0048, *The Prosecutor's Brief in Reply to the Defence Preliminary Motions on Behalf of Samuel Imanishimwe*, 24/03/1998; ICTR-99-46, ICTR-99-46-0072, [*Cyangugu*] – *Bagambiki – Ntagerura et al – The Prosecutor's Preliminary Pre-Trial Brief*, 24/05/2000; ICTR-00-61, ICTR-00-61-0025, *Gatete – Defence Preliminary Motions, Under Rule 72 of the Rules of Procedure and Evidence*, 12/04/2003; ICTR-00-61, ICTR-00-61-0022, *Gatete – Prosecutor's Response to the Defence Preliminary Motion Challenging Defects in the form of the indictment Pursuant to Rule 72*, 09/05/2003; and ICTR-00-61, ICTR-00-61-0029, *Gatete, Decision on Defence Preliminary Motion*, 29/03/2004.

⁹⁷ ICTR-96-10A-0208, 6–7.

agreed to the conspiracy.⁹⁸ Despite the defence's reliance on a needlessly conservative understanding of what constituted conspiracy in law, this challenge was successful, the judges entered an acquittal for that charge, and Imanishimwe's defence was relieved of its obligation of defending this element of the case.⁹⁹ Whilst, as Chapter Three demonstrated, these interventions were not always successful, this shows the ability of the defence to influence the contents of the archive and, once again, the importance of law in shaping the ICTR's archive.¹⁰⁰

A Failure in Defence?

⁹⁸ This continued a long running battle between the defence and prosecution over this issue. ICTR-97-36-0043, 4; and ICTR-99-46, ICTR-99-46-0015, [Cyangugu] – Bagambiki – Ntagerura et al – Reply of the Accused Ntagerura Andre to the Prosecutor's Motion for the Joinder of his Trial with that of the Accused Samuel Imanishimwe, 05/07/1999, 6.

⁹⁹ ICTR-99-46, TRA000552/2, [Cyangugu] – Ntagerura et al – Redacted Transcript of 06/03/2002– Oral Hearing on the Motion of Imanishimwe for Acquittal on Conspiracy Count, 06/03/2002, 37–9, 42–3 and 50–60. This was despite the judges, during the joinder hearing, accepting the prosecution's more fluid understanding of what constituted conspiracy.

The Trial Chamber is of the opinion that to establish the existence of a conspiracy, it is not necessary for the Prosecution to prove that the accused all acted together and at the same time. It is sufficient to establish that the accused had a common purpose or design, that they planned to carry out that purpose or design and that they executed that plan. ICTR-99-46, ICTR-99-46-0018, [Cyangugu] – Bagambiki – Ntagerura et al – Decision on the Prosecutor's Motion for Joinder, 11/10/1999, 10.

Interestingly—and again showing the importance of law in framing the court's narrative—Ntagerura also challenged the prosecution at this stage, but not explicitly on the same grounds as in *Imanishimwe*. They instead argued that there were no charges to answer if the judges excluded evidence from the record that related to acts by Ntagerura not charged in the indictment. The judges ruled that they could not exclude evidence from the record at that stage and so the motion failed. ICTR-99-46, ICTR-99-46-0429, [Cyangugu] – Bagambiki – Ntagerura et al – Prosecutor's Response to the Motion for Exclusion of Evidence Pursuant to Rules 5, 95 and 98 Bis of the Rules of Procedure and Evidence Filed by the Defence for Andre Ntagerura, 04/03/2002, 1–2; and ICTR-99-46, TRA000521/2, [Cyangugu] – Ntagerura et al – Redacted Transcript of 05/03/2002 – Motion, 05/03/2002, 5.

¹⁰⁰ The final example also demonstrated the significance of the law's particular epistemology. For the judges in *Cyangugu* opted for a particularly conservative interpretation of what constituted a conspiracy that depended on an understanding of the social world that saw events (here conspiracy) as being neatly ascribable to individuals, and their need to understand the accused's responsibility through a lens that arguably overly stated the ability of individuals to act consciously and with autonomy and agency. As the prosecution, I think rightly, argued, the nature of conspiracy, *especially during genocide*, is much more fluid than this understanding allows for. *Prosecutor v. Emmanuel Bagambiki et al*, Case No. ICTR-97-36 (hereafter ICTR-97-36), ICTR-97-36-0150, Bagambiki – Imanishimwe – Munyakazi – Decision on the Defence Motion for the Separation of Crimes and Trials, 01/10/1998, 4–5; TRA000552/2, 8; and ICTR-96-10, ICTR-96-10A-00350, Ntagerura – Audio Recording of 11.08.1999 – AM, 11/08/1999.

A final issue that needs to be briefly touched upon here is the impact of the varying *quality* of the defence counsels on the trials. All of these tactics deployed by the defence, as with the prosecution, depended on the *quality* of the defence counsels. With the defence acting as essentially a check against the prosecution's power, if the quality of the defence was in doubt then so was the legitimacy of the trial as a whole and the 'authenticity' of the records contained within the archive.

The defence counsels, particularly in the early years of the Tribunal, were plagued with allegations of poor practice, ineffectiveness and corruption. During *Akayesu*, the defence counsel lacked both strategy and control, and also demonstrated poor cross-examination style as they seemed to simply ask random and sporadic questions in the hope that the witness would snap. These problems were particularly apparent during Akayesu's own testimony, which at one point rambled on for nearly 89 pages without any interruption, only to be brought to order after the judges intervened.¹⁰¹ 'Now I would like to know whether Counsel Tiangaye has specific questions to ask. I do not want us to continue the monologue. I want us to have a dialogue.'¹⁰² Moreover, during the closing arguments, Tribunal staff found the defence counsel—who had failed to show up at the trial—drunk in a bar, and it is perhaps unsurprising that Akayesu complained about the quality of his defence during the trial and requested a change of counsel; this also featured as a key, although unsuccessful, aspect of his appeal (submitted by a new counsel).¹⁰³

¹⁰¹ ICTR-96-4, CONTRA001231, *Akayesu – Transcript of 12/3/1998*, 12/03/1998, 64–153.

¹⁰² *Ibid.*, 153.

¹⁰³ Senior Legal Office – ICTR Chambers (Copenhagen, Denmark: June, 2016); and ICTR-96-4, CONTRA000049, *Akayesu – Transcript of 1/11/2000 – Appeals Hearing*, 01/11/2000, 26–56 and 120.

These issues spread beyond *Akayesu*, with similar signs of incompetence seen with Imanishimwe's defence. UN reports on these issues also found that 'fee-splitting' between defence counsels and their clients, along with the Tribunal's pay-regime (that paid defence counsel per day rather than per case), had produced excessive lawyering (often in the form of pointless motions) and slow trials, showing with particular clarity how these practices impacted on the trials.¹⁰⁴ In response, a new pay regime was introduced that paid counsels by the trial, and the Rules of Procedure and Evidence (RPE) was amended in 2000 to give the chambers powers to sanction counsels for 'frivolous' motions.¹⁰⁵ However, questions over the defence counsels continued to arise and were not helped by revelations that some defence teams had employed suspected genocidaires as investigators.¹⁰⁶ This happened in *Cyangugu* where it emerged that the Imanishimwe's defence had employed a suspect indicted by the

¹⁰⁴ A/55/759, *Financing the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994: Report of the office of internal Oversight Services on the investigation into Possible Fee-Splitting Arrangements between Defence Counsel and indigent Detainees at the International Criminal Tribunal for Rwanda and the International Tribunal for the former Yugoslavia*, 01/02/2001, 8–13; and A/56/853, *Financing of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991: Financing of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994: Comprehensive report on the results of the implementation of the recommendations of the Expert Group to Conduct a Review of the Effective Operation and Functioning of the International Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda*, 04/03/2002, 2 and 6. Indeed, some counsels made a small fortune working at the Tribunal, with it being rumoured that one particular defence team held a party at a bar in Arusha to celebrate breaking the \$1million mark.

¹⁰⁵ A/60/229-S/2005/534, *Report of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994*, 15/08/2005, 16; and A/56/853, 6; A/55/435-S/2000/927, *Report of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States Between 1 January and 31 December 1994*, 02/10/2000, 13; and A/55/759, 13.

¹⁰⁶ For instance, it was discovered that the co-counsel for Kabiligi had forged their Paris Bar certificate and was not actually a qualified lawyer. 'A Settling of Bad Accounts' (see Internet Materials).

Tribunal, Siméon Nchamihigo, who was directly connected to the charges led in *Cyangugu*.¹⁰⁷

This is not to say that all defence counsels suffered from issues of incompetence. The general feeling at the Tribunal was that over time the quality of the defence improved, as lawyers with greater experience were attracted, such as Peter Robinson, who did a huge amount both for the reputation of the defence at the ICTR but also for ensuring that trials were being conducted as fairly as possible.¹⁰⁸ Moreover, some responsibility for these issues falls elsewhere, as the defence were, for instance, hugely under-resourced (especially compared with their ICTY counterparts) in the early years.¹⁰⁹ However, the quality of the defence (as it was for Akayesu and Imanishimwe) could have serious consequences for the outcome of the case and hence the records produced in the archive.

Conclusion

This chapter has examined the tactics used, and the accounts of violence produced, by the defence—why these existed as they did, and what effect this had on the archive. This has further shown the importance of legal and non-legal discourses in shaping the archive in particular ways, which were encapsulated here with the concept of the ‘conditions of truth’, as also discussed in Chapter Two. As I have shown, these conditions played a central part in

¹⁰⁷ ICTR-99-46, TRA000396/1, [*Cyangugu*] – *Ntagerura et al* – *Redacted Transcript of 23/05/2001*, 23/05/2001, 1–8.

¹⁰⁸ Defence Counsel – ICTR and ICTY (Interview via Skype: February, 2016).

¹⁰⁹ CONTRA001226, 10; ICTR-96-4, ICTR-96-4-0065, *Akayesu – Defense Request for Expedited Amendment of the Directive on Assignment of Defense Counsel so that Mr. Akayesu can Enjoy the Same Rights, Privileges and Resources as Accused Before ICTY*, 07/11/1996.

determining why the records of the archive were constructed as they were. This has also further demonstrated relevance of the concept of the ‘processes of truth’, as it has shown the importance of processes like cross-examination, and again the different roles of different actors, when exploring how and why the archive exists as it does. This was clearly seen here through the effect that the ‘rules of encounter’ between the legal actors and witnesses (which included protecting the rights of the victims and perpetrators) had on which accounts of violence were to be produced and archived. As is beginning to become clear it is these factors that give the archive its particular quality.

To what extent, however, does this suggest that the defence left their mark on the archive? Does this show that, as is so often alleged, the accounts produced at these trials focused on the defendant, producing ‘perpetrator centric’ narratives (often seen as being the primary reason why victims were silenced within these spaces)? Indeed, as has been suggested over the last three chapters, the accounts produced during the trial stage did appear to focus on, and revolve around, the accused and their actions. However, I would argue that the strength of the ‘conditions of truth’ meant that, whilst focused on the accused, the specificity of the defendant and their experiences of the violence often struggled to come through during the trials. What I found particularly striking in my analysis of these trials was the sheer level of commonality that existed between each of the defences’ accounts and representations of the accused, which suggests that the nuances of each of the defendant’s characters and roles in the violence was to a certain extent lost, and that this was true of both the defence’s *and* the prosecution’s depiction of the accused. Paradoxically, then, the defendant was simultaneously central to the records produced, yet also *de-centred* within them. I would go further and argue that within the records of the archive there is a *greater* level of specificity concerning the experiences of victims and ‘ordinary’ perpetrators than there is of the accused.

Several other factors further demonstrate this decentring of the defendants. As the Barayagwiza affair demonstrated, the accused was often missing from the forefront of the Tribunal's concerns, something that was also demonstrated by the Tribunal's failure to ensure that the defendants were adequately represented, the length of the pre-trial detention of many of the accused (Gatete's lasting for over seven years) and the duration of many of these trials (*Butare*, for instance, lasted for nearly 19 years). The complexity and novelty of these proceedings certainly accounts for much of this, as does the need (as claimed in *Barayagwiza*) to consider the rights of the victims. However, if nothing else this shows that for better or worse the defendant and their rights were not at the very heart of the Tribunal's concern. There is no better demonstration of this than the treatment of those ICTR defendants that have been either acquitted or released. Currently, there are eleven of these detained in a safe house in Arusha because the Tribunal cannot find anywhere to relocate them.¹¹⁰ Despite being found either innocent or having served their sentence, the defendants are subjected to indefinite imprisonment. With such treatment, and such a clear violation of their human rights, it seems hard to maintain the idea that these processes are, essentially, perpetrator-centric.

As was suggested above, however, the moment of judgement needs to be considered before any conclusions as to the archive can be made. How did the defence narratives and tactics influence the judges, what role did the witnesses' testimony and the prosecution's frameworks play in this? How did the judges intervene elsewhere in the trial process to impose their authority? To what extent does the archive belong to them? These questions will be the focus of the next chapter.

¹¹⁰ 'Former Rwandan Convicts Stranded', *The Citizen*, (see Internet Materials list).

Chapter Five: The Moment of Judgement—a Moment of Justice?

Introduction

The judgements are, in many respects, the most significant type of record in the archive. They represent the climax of each of the trials and capture the Tribunal's final account of violence—each trial's truth. Their importance was further amplified as they represented one of the rare moments when the attention of the outside world turned (albeit still only partially) to the Tribunal. As Elizabeth Jones from *The Times* noted, these provided 'the moment of truth when we [could] find out what actually went on and who was responsible'.¹ Rather than the hours and hours of witness testimony that led up to this moment, it was this final account that permeated into the outside world. This chapter will examine what characteristics defined the accounts of violence rendered in the judgements and why this was the case. As the moment when the judges exerted the most control over the archive, did this represent *their* account of the violence, or did the witnesses, as during the trial, intervene and shape the way in which this unfolded? What is of particular interest here is the extent to which the conditions and processes of truth governed this process, and, as such, the way in which the court interpreted or *translated*—returning to James White's idea—the witnesses' experiences within the judgement, and what were the consequences of this for the archive.² There were also, of course, two different judgements rendered in each trial, one for the trial of first

¹ 'Can Journalism Kill?', *The Times*, 27 October 2000.

² See Intro., n. 35.

instance and a second for the appeals. How do these two judgements, and their accounts of violence, compare? This chapter will, however, begin, by looking at how the interactions between the judges and the other agents in the court played out prior to the judgement. To what extent did the judges' hold over the archive begin *before* they rendered judgement and what factors account for why the judges acted as they did? This chapter, then, explores the archive from the judges' perspective, assessing their contribution to its creation.

Overseeing the Trial

When overseeing the trials at the ICTR, the judges performed two key roles. First, the judges intervened in the trials to determine the scope of the prosecution's or defence's case. Second, they ensured that the various actors in the courtroom were performing their roles as the court expected.

Determining the Scope of the Evidence

Within the courtroom, it was the judges who ultimately had the power to decide what evidence could be presented, and hence played a significant role in determining which accounts of violence entered the archive during the trials. This was seen in Chapter Three, where, for instance, it ultimately fell to the judges to determine whether or not a witness was permitted to testify to certain events based on their perceived relevance to the case at hand. In each of those examples the judges ultimately sided with the prosecution, and permitted the

witnesses to give their account of violence, even when, as the defence claimed, the testimony seemed to exceed the parameters of the case.³

However, in other instances the judges' decisions worked to, and in some instances drastically, reduce the scope of the trials as they prevented evidence from being heard. This was seen, for example, in *Cyangugu* with the judges' rulings over the relevance of the defence's attempts to introduce evidence of the non-international nature of the conflict, which, as was discussed in the previous chapter, formed an important part of the defences' strategy.⁴ Here, the judges *prohibited* the defence from producing evidence of this, noting that Tribunal's statute and the UNSC (by only providing for the prosecution of war crimes under the 'additional protocols 2') had clearly determined that the violence constituted a non-international armed conflict.⁵ In *Gatete*, the judges made this point even more firmly and took judicial notice of this 'notorious fact of common knowledge' in order to make it absolutely clear that there was no room in the court (or the archive) for this line of argument.⁶

The importance of taking judicial notice, however, went far beyond the immediate trial and, hence, made a particularly substantial impact on the archive, as this, essentially, rendered this finding 'set in stone'. For this meant that the fact in question was considered to be of such

³ See Chap. Three, notes 34-40.

⁴ See Chap. Four, n. 51.

⁵ The judges argued: 'The Security Council has said it is an internal conflict and not international. It goes further than us taking judicial notice. The Security Council, itself, has said that this conflict was an internal conflict and not international. So, we don't have to go and adjudicate that.' *Prosecutor v. André Ntagerura et al*, Case No. ICTR-99-46 (hereafter ICTR-99-46), TRA001278/2, [*Cyangugu*] – *Ntagerura et al* – *Redacted Transcript of 29/05/2002*, 29/05/2002, 129.

⁶ *Prosecutor v. Jean Baptiste Gatete*, Case No. ICTR-00-61, ICTR-00-61-0086/1, *Gatete – Decision on Prosecution's Motion for Judicial Notice of Facts of Common Knowledge*, 21/08/2009.

notoriety that no reasonable person could dispute its validity.⁷ As such, the prosecution could rely on these rulings in future trials rather than re-establish these ‘notorious facts’ through new evidence. One other example of judicial notice will be considered here to demonstrate the significant impact that these types of rulings had on the scope of the trials at the ICTR and ultimately the contents of the archive.

During *Karemera et al* the prosecution submitted a request that the court take judicial notice of several facts related to the violence in Rwanda, including that a genocide against the Tutsis had taken place. The defence, however, successfully challenged this and the trial chamber ruled that such judicial notice would violate the defendants’ right to be presumed innocent as it would relieve the prosecution of their legal responsibility of establishing that genocide had occurred in Rwanda.⁸ The prosecution subsequently submitted an interlocutory appeal against the decision, and the appeals chamber ruled in favour of the prosecution and took judicial notice of the genocide. The appeals judges argued that, contrary to the trial chamber’s decision, the judicial notice simply removed the prosecution’s obligation to prove that there was a genocide against the Tutsis at a national level, meaning that the prosecution still had to prove that the accused’s acts were *part of that genocide*.⁹ The judges even went as far as to argue that ‘[t]he fact of the Rwandan genocide is a part of world history, a fact as certain as another, a *classic instance of a ‘fact of common knowledge’* (emphasis added).¹⁰

⁷ *Ibid.*

⁸ *Prosecutor v. Édouard Karemera, Matthieu Ngirumpatse and Joseph Nzirorera (Government 1)*, Case No. ICTR-98-44, (hereafter ICTR-98-44), ICTR-98-44-2076/1, [Government 1] – *Karemera et al – Decision on Prosecution Motion for Judicial Notice*, 09/11/2005, 4–5.

⁹ ICTR-98-44, ICTR-98-44-2411/1, [Government 1] – *Karemera et al – Decision on Prosecutor’s Interlocutory Appeal of Decision on Judicial Notice*, 16/06/2006, 13–5.

¹⁰ *Ibid.*, 14.

This was a decision of immense symbolic significance, and it arguably fulfilled one of the Tribunal's extra-judicial goals, which had been to offer a serious challenge to revisionism—no reasonable person could now deny that what happened in Rwanda constituted genocide. In terms of the archive, beyond its symbolic importance, this meant that from then on, the trials did not need to offer wider contextual evidence of the occurrence of genocide, but could, as will be discussed more below, focus more narrowly on the accused's responsibility for the violence within their locality. This, then, essentially limited, or perhaps streamlined, what evidence was required in future trials.

Whilst the judges' impact on the archive here can be seen as rooted in their application of the law, there were a number of instances whereby the judges' decision to exclude evidence appeared more politicised. This can be seen with the judge's rulings over the permissibility of sexual violence evidence, which once more demonstrated the significance of gendered and patriarchal discourses within the courtroom. I will draw on one example from *Gatete* to explicate this.

During *Gatete*, witness BAT testified to her first sighting of Gatete during the genocide at a local commercial centre:

Prosecution: Madam Witness, you said a few moments ago that you heard a vehicle and that you saw Jean-Baptiste Gatete. You said you realised they had not come to protect you. What made you say that?

Witness: I said that Gatete had not come to protect us, because after coming out of his vehicle, we heard whistles and Gatete asked the people who were there to kill Tutsis and rape young Tutsi girls and women before killing them. It is for this reason that I thought he had not come to protect us, but, rather, to ask the killers to kill us.¹¹

¹¹ *Prosecutor v. Jean Baptiste Gatete*, Case No. ICTR-00-61 (hereafter ICTR-00-61), TRA005537/2, *Gatete – Redacted Transcript of 12/11/2009*, 12/11/2009, 6.

The defence, however, objected on the grounds that the witness had not mentioned the order in their pre-trial statement. The prosecution tacitly admitted that this *particular order* was not included within the witnesses' statement, but contended that the:

what this witness is testifying to are mere elaborations and details and that the thrust of the evidence, the core of the evidence, the essential part of the evidence is all there in the statement.¹²

The judges sided with the defence, as they argued that the witness statement only mentioned that the witness saw Gatete at the commercial centre, not that she had heard any orders.¹³ As such, this aspect of the testimony was removed from the court's narrative, and whilst the witness was subsequently 'allowed' to continue and testify to the successive rapes that she suffered (because of this order) no legal link was provided between the acts she suffered and Gatete. This decision becomes troubling when the charges against Gatete are considered. The indictment against Gatete made it *very* clear that Gatete was being accused of ordering Interahamwe to commit acts of sexual violence *and* that BAT was one of the victims that resulted from this order. Paragraph 18 of the indictment read:

[...] Jean-Baptiste GATETE, with Murambi *bourgmestre* Jean de Dieu Mwanga, transported a convoy of armed *Interahamwe* to Akarambo cellule where GATETE ordered the *Interahamwe* to burn, loot and pillage Tutsi homes *and to rape and kill civilian Tutsi.*) [...]. *Then on or about 8 April 1994, BAT was raped by two Interahamwe, the son of NYAMUGARA and KAREMER. The Interahamwe raped and killed Tutsis as a result of the actions of Jean-Baptiste GATETE.* (Emphasis added.)¹⁴

Not only, then, did the statement contain a reference to this order tacitly, but the indictment, with unusual specificity, *directly charged Gatete with ordering the rape, noted the victim along with the location and date of that rape AND the names of the perpetrators, declaring in no uncertain terms:* 'The Interahamwe raped and killed Tutsis *as a result of the actions of*

¹² *Ibid.*, 7–8.

¹³ *Ibid.*, 10.

¹⁴ ICTR–00–61, ICTR–00–61–0036/1, *Gatete – Amended indictment*, ICTR–00–61, 10/05/2005, 5–6.

Jean-Baptiste GATETE.’ What appeared to be going on here, once again, was that the Tribunal placed more severe standards upon evidence pertaining to sexual violence. With this, gendered and patriarchal discourses influenced the way in which the accounts of violence were constructed, and challenged, within the courtroom and hence left an indelible mark on the archive.

These examples show that the judges significantly shaped the archive during the trial phase by determining what evidence was needed and relevant for the case at hand. The latter two examples also point to the tense, and at points problematic, relationship that the Tribunal had with its extra-judicial goals. The decision concerning the judicial notice of the genocide, for instance, represented both an incredibly significant symbolic act, but also a shift in the courts practice as it began to concern itself solely with the legal matters at hand. This, as will be discussed shortly, affected how witnesses were treated as they were increasingly used in a utilitarian fashion within the courtroom. The second example points to the problematic politics that the Tribunal became embroiled in as it reproduced *and legitimised* discourses that rendered violence committed against women of secondary importance to the apparatus, something that was to feature in the judgements also.

Controlling Participation

The Judges also intervened proactively throughout the trials to ensure that each participant (whether legal counsel or the witnesses) acted in an appropriate matter, in line with what the court expected of them. During *Cyangugu*, for example, the judges intervened during Imanishimwe’s re-examination of a witness to remonstrate:

Mr President: I don't see where it takes us when you frame the question that way because he can't -- he does not understand it, and I don't understand it either because I don't see why the question is put in that form [...].

Don't bother to go into such detail [...].¹⁵

And later on:

Mr President: I have a problem. You are simply reading -- re-taking him through measurements that he gave in cross-examination. What is the purpose? Just to repeat what he said in cross-examination? Because that's all it is [...]. Where does this take us? It doesn't take us anywhere [...].¹⁶

Similarly, when Witness PCF seemed to be answering in a roundabout manner, the judges intervened with an order:

Mr President: Just remind him that I'd indicated to him he should try and answer the questions in a direct manner and not give long, drawn out answers.

Witness: Mr President, the way I'm answer [*sic*] the questions is the best way I know how to answer the questions that are being put to me. Thank you, Mr President.

Mr President: If he is asked when he got married, that's a straightforward answer. If he is married, he says when he got married; if he's not, he says so. He doesn't need to give any long, drawn out answers. Just tell him that [...].¹⁷

What was also notable was that the judges became *more* interventionist as the Tribunal went on. The judges during *Gatete*, for instance, were far more interventionist than during either *Cyangugu* or *Akayesu* (and *Cyangugu* judges were more interventionist than during *Akayesu*).¹⁸ It was also possible to see how the nature of the interventions changed over

¹⁵ ICTR-99-46, TRA001621/2, [*Cyangugu*] – *Ntagerura et al* – Redacted Transcript of 08/10/2002, 08/10/2002, 4-5.

¹⁶ TRA001621/2, 6.

¹⁷ ICTR-99-46, TRA001795/1, [*Cyangugu*] – *Ntagerura et al* – Redacted Transcript of 22/10/2002, 22/10/2002, 24.

¹⁸ A/54/634, *Financing the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994: Report of the Expert Group to Conduct a Review of the Effective Operation and Functioning of the International Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda*, 22/11/1999, 29. See the testimony of Witness NN from

time.¹⁹ Whilst during *Akayesu* the judges' interventions appeared to be focused on extracting as much information as possible—in order to assist their understanding of the violence—during *Gatete* the judges' questioning was far more combative.²⁰ In fact, at some points the *Gatete* bench questioned the witnesses to the extent that it blurred the line between the judges on the one hand, and the prosecution and defence on the other.²¹ During *Gatete* this type of intervention by the judges was common:

Judge Muthoga: Yes. I'm asking you -- look this side, Mr. Witness. I'm asking you to tell me, did you actually look out to see if Mr. Gatete was there or not, amongst those 50 of you?

The Witness: As I was getting ready to strike him with a hammer, I had the time to look around me to see the people who were present or those who were not present. Gatete was not there.

Judge Muthoga: So Gatete is one of the people you expected to be there but was not there?

The Witness: No. I wasn't expecting it. I am speaking in my capacity as a participant at that attack. And I am taking into account the other assailants who were with me. I am also speaking in my capacity as an eyewitness to these events who is willing to speak the truth. I am, therefore, repeating that I did not see Gatete at that scene.²²

Akayesu (*Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4 (hereafter ICTR-96-4), CONTRA001227, *Akayesu – Transcript of 3/11/1997, 03/11/1997*); Witness PCI (ICTR-99-46, TRA001797/1, [*Cyangugu*] – *Ntagerura et al – Redacted Transcript of 24/10/2002, 24/10/2002*); and Witness LA54 (ICTR-00-61, TRA005152/1, *Gatete – Redacted Transcript of 08/03/2010, 08/03/2010*).

¹⁹ Again, I do not wish to overstate this shift and to imply that at some point the legal matters of the case were not *the* most important thing about the trials. Rather this is to suggest a shift in emphasis and the extent to which goals *in addition* to the legal determination of guilt were either added to, or removed from, the strategic function of the court. Even in *Akayesu*, then, a legal officer in chambers noted that he had to curb the history section of the judgement (rejecting a 70 page version) noting that they weren't writing a history book (despite that I think this statement downplays the extent to which the *Akayesu* judgement was seen as historically significant within the chambers). Senior Legal Office – ICTR Chambers (Copenhagen, Denmark: June, 2016).

²⁰ For example, towards the end of the testimony of Witness Cox, the judges asked the witness whether they had heard anything on the radio when they had been in Rwanda, and what their impression was of its importance. This had not featured in any of the examination-in-chief but, rather, marked the judges' attempts to understand what happened. Similar exchanges could be seen with the judges trying to get to know about who the Interahamwe were – who was a member of these groups, what role did they play in the violence and how this changed over time. ICTR-96-4, CONTRA001185, *Akayesu – Transcript of 17/1/1997, 17/01/1997*, 219–223.

²¹ For an example of this see ICTR-00-61, TRA005145/1, *Gatete – Redacted Transcript of 10/3/2010, 10/3/2010*, 5; and ICTR-00-61, CONTRA018748, *Gatete, Redacted Transcript of 11/3/2010, 11/03/2010*, 34.

²² TRA005152/1, 76. A similarly odd approach taken by the Judges during this witness's testimony was:

Madam President: And with respect to that attack, you told us that there were a lot of people who attended; they came from all over; and that you could not remember all of their names because it happened a long time ago; right?

The Witness: Yes. That is correct. I cannot remember all names, but I do remember some names.

Madam President: And still you remember that Mr. Gatete ate — drank — drank beer in February 1993 when he visited the bar. *Ibid.*, 74.

These interventions were particularly intrusive during the defence's case and this, unsurprisingly, led to a degree of friction between the defence and the judges. After the judges intervened once more, *Gatete's* defence argued:

Ms Poulain: And it is an open question which requires eventually a long answer. I'm very sorry, President, but it's *our* evidence.

Madam President: *No*. They are -- not necessary -- detailed answer. We don't need all these details. If he's a good administrator, say he's a good administrator, if he wants it to be said that he was a good leader and administrator and good -- a good leader or authority in the commune. But he should not go on giving us each and everything.

Ms Poulain: Well, I think it gives more weight to the evidence than a simple affirmation. I am sorry. (Emphasis added.)²³

Over time, moreover, and with even greater consequence for the archive, the judges also started to order the counsels to *reduce* the number of witnesses they were planning to call, so as to speed up the trials, when they thought that these were *excessive* to the case at hand.²⁴ During *Cyangugu* the President of the court pleaded with the defence to reduce the witness lists:²⁵

Judge Ostrovsky is looking at the list in *which you are drowning us with witnesses, and we don't wish to be drowned*. So take us seriously about reducing this list substantially, substantially. (Emphasis added).²⁶

The judges, in some instances, even went as far as to suggest *which* of the witnesses should be dropped.²⁷

²³ ICTR-00-61, TRA005147/1, *Gatete – Redacted Transcript of 09/03/2010*, 09/03/2010, 50.

²⁴ ICTR-99-46, TRA001998/1, *[Cyangugu] – Ntagerura et al – Redacted Transcript of 05/02/2003*, 05/02/2003, 44. See also ICTR-99-46, ICTR-99-46-0183, *[Cyangugu] – Bagambiki – Ntagerura et al – Compliance with Trial Chamber III Order of 23/08/2000 (Attached Shortened List of Witnesses)*, 18/09/2000; and ICTR-99-46-0488, *Proposed Reduction in the List of Defence Witnesses in the Cyangugu Case, Case No. ICTR-99-46-T*, 30/04/2002.

²⁵ ICTR-99-46, TRA000526/2, *[Cyangugu] – Ntagerura et al – Redacted Transcript of 12/03/2002*, 12/03/2002, 104-5.

²⁶ ICTR-99-46, TRA001601/2, *[Cyangugu] – Ntagerura et al – Redacted Transcript of 28/03/2002*, 28/03/2002, 7.

²⁷ ICTR-99-46, TRA001270/2, *[Cyangugu] – Ntagerura et al – Redacted Transcript of 14/05/2002*, 14/05/2002, 3-6.

Finally, the judges became increasingly willing to uphold the defences' objections to the witnesses' testimony when it was feared that, due to a lack of notice, allowing the evidence to enter the court might undermine the defendant's right to a fair trial.²⁸ This marked a change in practice from the early trials at the Tribunal which seemed to try to allow as much evidence as possible into the courtroom and to determine the extent to which this challenged the defendants' rights at the judgement stage.²⁹ Rather, as time passed the relevance threshold was more tightly and rigorously enforced.

Overall, there was a sense that the judge's priorities and that the way in which the Tribunal pursued the trials shifted as the Tribunal progressed. This change was also acknowledged in the judicial notice decision mentioned above where the judges noted:

During its early history, it was valuable for the purpose of the historical record for Trial Chambers to gather evidence documenting the overall course of the genocide and to enter findings of fact on the basis of that evidence [...]. At this stage, the tribunal need not demand further documentation [...].³⁰

The role of documentation had, it seemed, come to an end and now the focus was to turn increasingly just to the legal matters at hand, which, as argued above, was also reflected in the legal actors more probing questions and the judges' overall more stringent control over the proceedings.

²⁸ Defence Counsel (2016); and Head of Appeals (2015).

²⁹ Deputy Appeals Chief (2015). Wilkinson noted that you could argue that this meant that the Tribunal did not produce as full an account as it possibly could, but noted that what they were interested in was 'truth with fairness'.

³⁰ ICTR-98-44-2411/1, 14. Whilst some allowances must be made for the different approaches adopted between different chambers, the consistency with which changes were identified here, and the broader context within which these changes took place – discussed more below – suggest that there was a significant change in the practice of trial judges at the ICTR. See Byrne, 'The New Public Prosecutor' (see Intro., n. 87), 247.

Prior to the judgement, it was clear that the judges played a significant role in determining what would enter the archive and in what form. Significantly, in each of the examples discussed in this section, the end result of those interventions was that the records deposited in the archive were to become more streamlined, as evidence was constrained or outright excluded. This is, at this point, not to necessarily criticise this process whereby the court's gaze became more focused, but for now simply to set out how and why the trials changed over time as they did. For as will become clearer over the coming chapters, these changes did align with a reorientation about *who* it was that these trials were working for and, as can already be gleamed, what they were supposed to achieve. The influence of the judges during the trial phase was, however, only the tip of the iceberg. As the next section will demonstrate, the judge's control over what entered the archive and in what form only increased as they rendered judgement in each case.

The Judgement

The trial judgements at the ICTR consisted of two main sections. The first was the courts 'factual findings', which set out the factual truth about what had happened, and, second, the 'legal findings', presented the court's final legal verdict for the case. Each of these will be considered in turn here. In exploring the factual findings I will first consider what criteria affected the judges' determination of the validity of the witnesses' accounts, followed by an examination of the rules that governed the judges' imaginings of the role played by different actors during the violence. The second section, relating to the legal findings, will show how the legal framework and non-legal discourses, or the 'conditions of truth', shaped the trial's final account of the violence. What becomes apparent here is that as the judgements

progressed, as they moved closer to their final legal account of what occurred, each trial's narratives became even further determined by the 'conditions of truth', noted in the previous chapters, a process which I will show continued into the appeals stage of each trial. These sections also highlight the continuing complexity of relationship between the witnesses and the legal actors of the courtroom, in this case the judges, as the witnesses appeared to influence the way in which the judges constructed the judgements whilst simultaneously being pushed to the periphery of the process once more.

Determining the 'Facts'

The chamber's decisions over whether or not to accept a witness's testimony as both valid and able to contribute towards a trial's factual account of the violence were driven by two main factors. The first was its assessment of the witnesses' credibility. This was determined by the judges' assessment of how 'convincing' a witness's performance was, shaped by particular imaginings of how a credible witness would testify. This was based on a witness's ability to tell a story that was: internally coherent; told in a clear and orderly way, with as little emotion as was possible; and aligned with other accounts of the events given by other witnesses. It was, furthermore, important that the witness answered any questions during the cross-examination directly and quickly.³¹ The judges' assessment was also influenced by decisions over the different levels of reliability of different types of witness and about the different possible contributions that they were permitted to make to the court's final 'truth'. Some of these factors that particularly affected the trials' outcomes were: the prioritisation of

³¹ ICTR-96-4, CONTRA001183, *Akayesu – Transcript of 15/1/1997*, 15/01/1997; ICTR-99-46, TRA001288/2, *[Cyangugu] – Ntagerura et al – Redacted Transcript of 11/07/2002*, 11/07/2002, 79–80. Head of Appeals (2015); ICTR-96-4, ICTR-96-4-0459/1, *Akayesu – Judgement*, 02/09/1998, 36; ICTR-99-46-0599/1, 27, 30, 34, and 84; and ICTR-00-61, ICTR-00-61-0240/1, *Gatete – Judgement and Sentence*, 31/03/2011, 103.

witnesses that had seen a crime, over those that had heard about it; a general scepticism of perpetrator witnesses; and the decision that expert witness testimony was not permitted to contribute directly to a court's final decision regarding the accused's guilt.³²

These rules particularly affected the prosecution during *Cyangugu* where they led the court to reject *all* direct evidence of Bagambiki's and Ntagerura's participation in the violence.³³ Perhaps particularly significant here was that Professor Guichaoua's expert testimony was not allowed to contribute towards the factual findings against the accused. This meant that the judges were 'forced' to overlook the only evidence that demonstrated that Bagambiki's and Ntagerura's 'pacification meetings'—something that both defendants accepted occurred—were part of the organisation of the genocide rather than attempts to introduce peace into the region (as Bagambiki and Ntagerura claimed).³⁴ These rules also meant that the judges rejected the key elements in the prosecution's overall framework, which had demonstrated the accused's propensity towards committing acts of violence, their history of discriminating against the Tutsis, and their genocidal intent.³⁵ The failure of this framework, along with the Tribunal's high threshold of proof—beyond a reasonable doubt—meant that the Chamber

³² ICTR-99-46-0609/1, [*Cyangugu*] – *Ntagerura et al* – *Prosecutor's Notice of Appeal*, 25/03/2004; ICTR-99-46-0599/1, 31 and 47. See also *Supra* note 31, and references below, particularly fn. 33.

³³ ICTR-99-46, TRA001616/1, [*Cyangugu*] – *Ntagerura et al* – *Redacted Transcript of 26/03/2002*, 26/03/2002, 39; ICTR-99-46, TRA002002/2, [*Cyangugu*] – *Ntagerura et al* – *Redacted Transcript of 17/02/2003*, 17/02/2003, 24–5; ICTR-99-46, TRA002053/1, [*Cyangugu*] – *Ntagerura et al* – *Redacted Transcript of 11/08/2003*, 11/08/2003, 8; ICTR-99-46-0599/1, 42, 44 and 47. It also seems as though its lack of inclusion in the indictment meant that whilst the 1992 Bugesera massacre featured within the trial's narrative, it was not mentioned at all in the judgement. ICTR-99-46-0599/1, 45–7; ICTR-99-46, TRA001774/1, [*Cyangugu*] – *Ntagerura et al* – *Redacted Transcript of 24/09/2001*, 24/09/2001, 54–61, and 197; and ICTR-99-46-0599/1, 27. The rulings on the value of perpetrator testimony particularly effected the judges' decision over Bagambiki's and Ntagerura's participation in a weapons drop, which had only been (for obvious reasons) witnessed by perpetrators. ICTR-99-46-0599/1, 34.

³⁴ Bagambiki admitted that the message of the meeting was 'to incite citizens to continue to track the enemy, regardless of where he is hiding and wherever he is hiding weapons without, however, threatening or mistreating innocent persons.' Within the discourses circulating within Rwanda during the genocide, and the equation of the Tutsis with the enemy, then this was a clear directive to continue the genocide. ICTR-99-46, TRA001918/1, [*Cyangugu*] – *Ntagerura et al* – *Redacted Transcript of 27/03/2003*, 27/03/2003, 34–6. This is also despite that, as Eltringham notes, the distinction between 'fact' witnesses and 'experts' is not as neat as the court would have it. Eltringham, 'Illuminating the broader context', 349.

³⁵ *Supra* note 32 and 33.

also rejected all circumstantial evidence relating to the accused's participation in the genocide, which contributed to Ntagerura's and Bagambiki's acquittals.³⁶ What is more, it was apparent that this created room for the majority of the chamber to accept the defence's 'did what they could' narrative, which led to the majority's decision to acquit Bagambiki for his responsibility for the murder of the refugees that he extracted from Karamapaka and the murder of refugees at the Gashirabwoba football field.³⁷

These decisions seemed yet again to indicate the imbalance of power between the legal agents and the witnesses, as it appeared that the witnesses' testimony was ripped out of context and judged against a set of rules that the witnesses had no hand in making. There were a number of ways, however, that it was possible to see again how the witnesses' testimony forced the court to reframe the way in which the evidence was approached at the Tribunal.

An interesting phenomenon at the ICTR in this respect was the way in which the judges tried to make 'allowances' for the cultural specificity of the witnesses' backgrounds and their

³⁶ The most striking instances of this were the Kamarampaka Stadium and the Gashirabwoba massacre, which marked the second time that Bagambiki was present just before a massacre, and where he personally removed persons that were then killed. ICTR-99-46-0599/1, 117-9.

³⁷ ICTR-99-46-0599/1, *Trial Judgement – the Prosecutor v. André Ntagerura Emmanuel Bagambiki Samuel Imanishimwe*, 25/02/2004 – *Judge Ostrovsky Dissenting Opinion*, para 16-7. One particularly odd finding here, which I believe demonstrates the success of the defence's 'did what he could' narrative was the judges' rejection of Bagambiki's responsibility for a massacre at Kadosomwa. The judges accepted Witness LAW's account that Bagambiki had been called to the site by soldiers, that he had effectively told the refugees to commit suicide, and accused them of being related to the RPF. They also accepted that after he left the group the soldiers he was with shot into the air and the refugees were subsequently killed by Interahamwe who had been hiding nearby. However, the judges found that there was insufficient evidence to hold Bagambiki responsible for this. ICTR-99-46-0599/1, 160; ICTR-99-46, TRA000441/1, [Cyangugu] – *Ntagerura et al – Redacted Transcript of 28/02/2001*, 28/02/2001, 81-97. There were numerous other instances where the judges accepted evidence that pointed to Bagambiki's and Ntagerura's role in the genocide, but did not use it to establish their guilt. For evidence of Bagambiki's and Ntagerura's association with leading genocidaires: ICTR-99-46, TRA001291/2, [Cyangugu] – *Ntagerura et al – Redacted Transcript of 17/07/2002*, 17/07/2002, 86; and ICTR-99-46, TRA001293/2, [Cyangugu] – *Ntagerura et al – Redacted Transcript of 22/07/2002*, 22/07/2002, 44. For Bagambiki's role in other abductions from the Stadium: ICTR-99-46-0599/1, 78-9 and 89. For Bagambiki's role in the searches for accomplices in Kamembe town: ICTR-99-46-0599/1, 86-7, 96 and 130-1.

traumatic experiences when judging their testimony.³⁸ This was linked to a number of difficulties that the chamber and the prosecution encountered (as discussed in Chapter Three) due to the way the witnesses presented their evidence, which included: the witnesses' difficulty in providing 'accurate' time and distance measurements; the tendency for witnesses' testimony to evolve between their pre-trial statements and in-court testimony; witnesses' frequently evasive style of answering questions in court; and difficulties in ascertaining the source of the witnesses' knowledge.³⁹

Evidence of the court's adaptation to these challenges was seen in the *Akayesu* judgement, where the judges explicitly drew on Dr Ruzindana's expert testimony, discussed in Chapter Three, when setting out their approach to the witnesses' testimonies. This had a considerable impact on how the judges evaluated the 'truthfulness' of the witnesses' testimonies and how they constructed their accounts of violence.⁴⁰ Having accepted Ruzindana's explanation as to why witnesses did not always distinguish between what they had witnessed and what they had been told, the Judges stated that:

According to the testimony of Dr. Ruzindana, it is a particular feature of the Rwandan culture that people are not always direct in answering questions, especially if the question is delicate. In such cases, the answers given will very often have to be 'decoded' in order to be understood correctly. This interpretation will rely on the context, the particular speech community, the identity of and the relation

³⁸ ICTR President – (Arusha, Tanzania: June, 2015).

³⁹ ICTR-96-4, CONTRA001181, *Akayesu – Transcript of 23/1/1997, 23/01/1997, 23–8*. ICTR-99-46, TRA001796/1, [*Cyangugu*] – *Ntagerura et al – Redacted Transcript of 23/10/2002, 23/10/2002, 23/10/2002, 30–2*. ICTR-99-46-0599/1, 131. See also ICTR-99-46, TRA001620/2, [*Cyangugu*] – *Ntagerura et al – Redacted Transcript of 07/10/2002, 07/10/2002, 21–2 and 108*; ICTR-00-61, TRA005507/2, *Gatete – Redacted Transcript of 10/11/2009, 10/11/2009, 64 and 73*; ICTR-96-4, CONTRA001182, *Akayesu – Transcript of 24/1/1997, 24/01/1997, 117–8*; and ICTR-99-46, TRA001619/2, [*Cyangugu*] – *Ntagerura et al – Redacted Transcript of 03/10/2002, 03/10/2002, 8*.

⁴⁰ Indeed, I have not found any instances where a witness was deemed not to be credible solely on their inability to 'accurately' recall dates, times and distances. The only instances where this was the case was where subsequent site visits or measurements indicated that the witness could not have seen or heard what they claimed to be able to. ICTR-99-46-0599/1, 46.

between the orator and the listener, and the subject matter of the question. The Chamber noted this in the proceedings.⁴¹

And went on to note that:

cultural constraints were evident in [the witnesses] difficulty to be specific as to dates, times, distances and locations. The Chamber also noted the inexperience of witnesses with maps, film and graphic representations of localities, in the light of this understanding [*sic*], the Chamber did not draw any adverse conclusions regarding the credibility of witnesses based only on their reticence and their sometimes circuitous responses to questions.⁴²

Another issue was accounting for the changes between pre-trial and trial witness statements, which the defence regularly argued undermined the witnesses' credibility.⁴³ However, here the traumatic experience that these witnesses suffered was drawn on to determine how these shifts were interpreted, and whilst there were instances where witnesses were successfully challenged because of this, the judges in *Akayesu* set a clear marker for how this issue was to be dealt with:

Many of the eye-witnesses who testified before the Chamber in this case have seen atrocities committed against their family members or close friends, and/or have themselves been the victims of such atrocities. The possible traumatism [*sic*] of these witnesses caused by their painful experience of violence during the conflict in Rwanda is a matter of particular concern to the Chamber. The recounting of this traumatic experience is likely to evoke memories of the fear and the pain once inflicted on the witness and thereby affect his or her ability fully or adequately to recount the sequence of events in a judicial context. The Chamber has considered the testimony of those witnesses in this light [...]. *Inconsistencies or imprecisions in the testimonies, accordingly, have been assessed in the light of this assumption, personal background and the atrocities they have experienced or have been subjected to* (emphasis added).⁴⁴

Even more striking was the judges' decision that whenever there were discrepancies between the pre-trial and trial statements, they would show greater favour to in-court testimony

⁴¹ICTR-96-4-0459/1, 76-7.

⁴² *Ibid.*, 77.

⁴³ For an example see: *Ibid.*, 79.

⁴⁴ ICTR-96-4-0459/1, 42.

because it had been cross-examined, and therefore more rigorously tested, *even though* more time had passed between testimony and event.⁴⁵

Overall, this significantly affected how the judges assessed the evidence produced at the ICTR, and meant that they at times overlooked relatively serious issues with the witnesses' testimony.⁴⁶ For example when Witness LAW stated that they could not personally identify Bagambiki in court as a result of the traumatic nature of their experience, the court still accepted that the witness had encountered Bagambiki during the genocide, as claimed during their trial testimony.⁴⁷ At *Akayesu*, despite most of the prosecution's witnesses testifying in a manner that might have reasonably led to their credibility being questioned, out of 34

⁴⁵ *Ibid.*, 41. There was, more generally, a relatively 'progressive' approach towards evidence at the Tribunal from the very outset. This meant, for instance, that hearsay evidence was permitted, and uncorroborated testimony was also allowed to form the basis of judicial decisions, unlike in most common-law systems (which formed the basis of the court's rules). The rules clearly specified, moreover, that this was the case with sexual violence testimony, demonstrating, it appeared, a departure to from the deep scepticism that this type of testimony normally was subjected to in courts. ICTR Rules of Procedure and Evidence, Rule 96(i); Gideon Boas, 'Creating Laws of Evidence for International Criminal Law: the ICTY and the Principle of Flexibility', *Criminal Law Forum*, 12:1 (2001), 51. See Intro., n. 86. The prosecution also drew on the level of trauma and destruction experienced throughout Rwanda as part of their justification for why their evidence perhaps did not meet the standards that would usually be expected, such as their inability often to name specific victims of the massacres. ICTR-99-46, TRA000446/2, [*Cyangugu*] – *Ntagerura et al* – *Redacted Transcript of 09/05/2001*, 09/05/2001, 82–83. See also: TRA002053/1, 2. What is also notable here is that the level of specificity *expected* of the prosecution altered depending on the magnitude of the violence. With crimes like murder the names of the victims and perpetrators, as well as the date, time and location of the crime were expected. With large scale massacres, however, less specificity was required. ICTR-96-10, ICTR-96-10A-00347, *Ntagerura* – *Audio Recording: Defence Motion*, 19/03/1999.

⁴⁶ The defence, in fact, considered this to be a serious issue and during *Rutaganda* the defence unsuccessfully lodged an appeal against the trial chamber's decision to make 'allowances' for discrepancies in witness testimony due to the 'cultural specificity' of the witnesses. Stover, *The Witnesses* (see Intro., n. 55), 10.

⁴⁷ ICTR-99-46-0599/1, 160; TRA000441/1, 105. Further evidence that the Chamber took trauma into account with the types of narratives they accepted as true can be seen in the *Gatete* judgement: 'The Defence reminded Witness BBM that his May 1998 statement referred to the attack commencing at about 11.00 a.m. and that the Interahamwe broke down the gate of the parish compound, while his testimony was that the attack began sometime between 9.00 and 11.00 a.m. and the Interahamwe climbed over the fence. Witness BBM explained that the events were harrowing and occurred a long time ago. Given their traumatic nature and the passage of time, the Chamber considers these variances immaterial.' ICTR-00-61-0240/1, 78. This was not, however, always enough as the manner in which a narrative was told could mean that the judges did reject the credibility of a witness. 'In addition, the Chamber found Witness AIK's evidence confusing and inconsistent. While the Chamber acknowledges the impact of trauma on a witness's memory, in this instance, these ambiguities raise further questions about his reliability. In sum, the Chamber finds Witness AIK's evidence insufficient to support findings beyond reasonable doubt.' ICTR-00-61-0240/1, 51.

witnesses only one was deemed not to be credible.⁴⁸ A particularly serious shift in testimony, which the judges nonetheless accepted as credible, occurred during Witness D's (Emphrem Karangwa) testimony. Whilst Witness D's pre-trial statement claimed that he had buried his brothers after they had been killed by Akayesu, during the trial he claimed that he *hadn't* buried them.⁴⁹ The judges, however, ruled that this shift could be explained by the traumatic experience that Witness D had suffered, and his testimony that Akayesu had killed his brothers was consequently accepted as true.⁵⁰ This shows the significant effect that the judges 'allowances' could have on the archive.

The question, is, however, to what extent this demonstrated an essentially witness-orientated process? Two additional points should be made in this respect. First, when I interviewed Dr Ruzindana (who, after acting as an expert in several trials, became a senior reviser within the registry), he indicated that whilst the judges, and other members of the court, claimed to take the cultural specificity of Rwanda into account, this was done at a relatively superficial level.⁵¹ Overall there was a sense that a lack of sensitivity here remained an issue and that, on balance, Tribunal staff never really succeeded in sufficiently understanding Rwandese history

⁴⁸ ICTR-96-4-0459/1, para 408.

⁴⁹ *Ibid.*, 106. See also ICTR-96-4, CONTRA001198, *Akayesu – Transcript of 6/2/1997*, 06/02/1997, 171.

⁵⁰ These 'issues' appeared to feed into other courtroom practices as well. First, over time, even the manner in which the witnesses would be questioned on matters of distance and time changed, as witnesses, for instance, could be asked to demonstrate distance by using marker points within the courtroom (which would be subsequently measured). Senior Reviser (2015); Akayesu, 15/01/1997, 36–7; and Mathias Ruzindana, 'The Challenges of Understanding Kinyarwanda Key Terms Used to Instigate the 1994 Genocide in Rwanda' in *Propaganda, War Crimes Trials and International Law*, ed. Predrag Dojcicovic (Abingdon: Routledge, 2012), 150. Second, there also appeared to be a shift within the courtroom away from a focus on the more minute details of the crimes that had occurred, towards the broader, or perhaps cruder, accounts of the violence, even though the law concerns itself with exactly such precision. It therefore became possible for the court to accept as truths relatively vague facts, such as that a particular massacre occurred in, for example, 'late April'. *Prosecutor v. Pauline Nyiramasuhuko et al (Butare)*, Case No. ICTR-98-42, *Trial Judgement*, 24/06/2011, at: unictr.unmict.org (last accessed 15/07/2017), 512. See also ICTR-99-46, TRA000258/2, [*Cyangugu*] – *Ntagerura et al – Redacted Transcript of 31/01/2001*, 31/01/2001, 10–1.

⁵¹ Senior Reviser (2015). There is an extent to which the uniqueness of international courts should not be overstated. As Deborah Wilkinson pointed out, these issues also effect municipal trials whereby lawyers frequently come from very different backgrounds to those that they are representing. Deputy Appeals Chief (2015).

and culture,⁵² a sentiment that was also expressed in the interviews I conducted with Rwandese staff at the Tribunal.⁵³ Second, these changes also served a legal (and political) objective. There was a danger that, had the court not adapted in this manner, then so much of the evidence would have come into doubt that little of the record would have been left.⁵⁴ Without this, without the witnesses' testimony, there would have been no substance in the cases at the ICTR, and so there was a sense that that adaptation was *required* for the trials to continue. Combined, this raises further questions as to extent that the trial process at the ICTR was ever witness—let alone victim—centred.

The factual findings section of the judgements also saw the court's accounts of violence reframed as a result of the court's priorities and ways of seeing. Here, the judges produced particular understandings of what it meant to be a victim or perpetrator during the genocide and how the violence unfolded in Rwanda. These accounts positioned the accused as the most important actor in the violence and, like the prosecution, produced accounts of the violence that heightened sense of the accused's agency, their conscious and rational nature, and simultaneously diminished the agency of those around them.⁵⁵ A particularly extreme example of this was from the 'Media Trial' whereby the heightened responsibility of the accused, and their control over the country's key media outlets, produced a sense that there would not have been *any violence* whatsoever without them.⁵⁶ The judges stated:

⁵² Appeals Judge (2016).

⁵³ Senior Appeals Attorney (2015).

⁵⁴ However, again, Arguin stated similar considerations would likely be made for similar crimes in municipal jurisdictions. Head of Appeals (2015). President Joensen also noted that they only made these allowances to the extent that the case required. ICTR President (2015).

⁵⁵ Similarly, in accounts where the accused was found to have participated in a crime, the only other perpetrators that significantly entered the trial's narrative were those that had the accused had allowed or encouraged to act. For instance, in *Akayesu*, the judges rule that: 'The statements thus made by Akayesu at that gathering immediately led to widespread killings of Tutsi in Taba'. ICTR-96-4-0459/1, 173.

⁵⁶ See, for example Gatete's role in the Kiziguro and Mukarange massacres. ICTR-00-61-0240/1, 87 and 104. See also ICTR-96-4-0459/1, 161-91.

The power of the media to create and destroy fundamental human values comes with great responsibility. Those who control such media are accountable for its consequences [...]. Without a firearm, machete or any physical weapon, *you caused* the deaths of thousands of innocent civilians. (Emphasis added.)⁵⁷

This focus also meant that the factual findings exaggerated the extent of the victims' passivity during the violence. In the factual findings section in *Akayesu*, for example, the judges described Witness N's (here referred to as 'Victim Y') encounter with Akayesu, as detailed in Chapter Three, as follows:

Mugenzi took [Victim Y] by the arm to the door and hit her on the head with the barrel of his rifle. Victim Y was then forcibly taken to the Accused, who ordered her to lie down. In the presence of the Accused, Victim Y was beaten by the communal police officer Mugenzi who stepped on her neck, pushed the butt of his rifle into her neck, and stomped on her, threatened to kill her if she failed to provide the information he sought.⁵⁸

Whilst this, to an extent, retained the sense of the witnesses' power, as Witness N's evidence contributed here towards establishing the accused's guilt, as will be recalled from Chapter Three, this account contrasts with meaning and emphasis of Witness N's testimony, which captured both her sense of agency and purpose in defying Akayesu by refusing to give up the location of Alexia. As this suggests, within the judgement, the witness's testimony becomes translated into law's idiom, which could result in a shift in the *meaning* of the violence and in what it meant to experience and witness that violence. This process, however, became even more exaggerated in the court's legal findings.

⁵⁷ *Prosecutor v. Ferdinand Nahimana, et al*, Case No. ICTR-99-52, ICTR-99-52-1323/1, *Judgement and Sentence*, 03/12/2003, 317.

⁵⁸ ICTR-96-4-0459/1, 166-7.

Determining the Law

Within the legal findings of the judgement, the witnesses' testimonies and experiences were translated to fit within the legal framework of the trial to an even greater extent.⁵⁹ This was first seen in the role that the indictments played in determining what was, and what was not, permitted to contribute to the court's final legal findings concerning the accused's guilt. At this moment, the judges removed any evidence that fell outside of the indictment if it was determined that the lack of notice in the indictment of these charges had undermined the defence's ability to prepare an adequate defence.⁶⁰ During *Akayesu*, the way in which the indictment was framed meant that the judges refused to make any legal findings on any instance of sexual violence where Akayesu was not present, which excluded a considerable amount of evidence from the court's final consideration.⁶¹ This also meant that Witness J's testimony about the sexual assault of her six-year-old child—the testimony that, in part, led to the amended indictment—was ignored in the court's final account and it was not permitted to contribute towards establishing Akayesu's guilt.⁶² This was *despite* the court making factual findings regarding these crimes.⁶³ As such, this example demonstrates how the court's account became increasingly more restricted as the judgement progressed. As the judgement

⁵⁹ The whole of the legal findings in *Akayesu* evidence this, but it is particularly apparent in the court's final decision over his guilt for 'Direct and Public Incitement to Commit Genocide'. ICTR-96-4-0459/1, 268–269.

⁶⁰ It must also be remembered that many of the narratives constructed during the trial find *no* place within the judgement. For instance, during *Cyangugu*, all the evidence regarding the tension within the community – and the claims of RPF infiltration – produced during the trial were completely absent from the judgement. ICTR-99-46-0599/1. For an example of where this appeared during the trial see TRA001998/1, 7.

⁶⁰ ICTR-96-4-0459/1, 184.

⁶¹ The judges ruled that the indictment failed to properly charge Akayesu under Article 6(3) of the statute—superior responsibility, and so argued that they could only find Akayesu guilty of sexual violence crimes when he was present or had clearly instigated their commission. ICTR-96-4-0459/1, 168–170. Other narratives were also rejected in the final judgement, such as the repeated sexual assaults suffered by Witness NN at her home with her sister (Witness JJ) in front of her mother. CONTRA001227, 3/11/1997, 16–48. It must also be remembered that many of the narratives constructed during the trial find *no* place within the final judgement at all. For instance, during *Cyangugu*, all the evidence regarding the tension within the community – and the claims of RPF infiltration – produced during the trial were completely absent from the judgement. ICTR-99-46-0599/1. For an example of where these narratives appear during the trial see TRA001998/1, 7.

⁶² ICTR-96-4, CONTRA001186, *Akayesu – Transcript of 27/1/1997*, 27/01/1997, 101–2.

⁶³ ICTR-96-4-0459/1, 184.

turned from factual findings to legal findings, even more of the evidence heard during the trial was discarded.

Again, however, the legal findings contained evidence that pointed to the witnesses' ability to shape the law. A good example of this was the witnesses influence on the judges, particularly 'progressive', definition of sexual violence in *Akayesu*. It was as a result of the witnesses' testimony that the judges found that rape could not 'be captured in a mechanical description of objects and body parts' and instead found that it was 'a physical invasion of a sexual nature, committed on a person under circumstances which are coercive'.⁶⁴ This definition allowed for the incorporation of acts not typically seen as constituting sexual violence, as captured by Witness KK's testimony of how she had seen Interahamwe 'thrusting a piece of wood into the sexual organ of a woman as she lay dying' and by Witness PP's testimony that detailed Akayesu's order for 'the Interahamwe to undress a student and force her to do gymnastics naked in the public courtyard of the bureau community, in front of crowds'.⁶⁵ Drawing on the witnesses' experiences they also, in a particularly important ruling, determined that the environment surrounding these crimes was such that a lack of consent should be *presumed*.⁶⁶ These testimonies were also drawn on by the judges to make the landmark ruling that the rape could be considered an act of genocide.⁶⁷ With this, again, there is evidence of law shaping itself *around* the violence—*around the witnesses' experiences*.

⁶⁴ ICTR-96-4-0459/1, 240–1, 274–6. See also S/2015/884, *Letter Dated 17 November 2015 From the President of The International Criminal Tribunal for Rwanda Addressed to The President of The Security Council: Report on The Completion of The Mandate of The International Criminal Tribunal for Rwanda as at 15 November 2015*, 17/11/2015, 7 and 16.

⁶⁵ They drew here on the broader notion of torture to support this definition as an act intended cause 'intimidation, degradation, humiliation, discrimination, punishment, control or destruction of a person'. ICTR-96-4-0459/1, 275.

⁶⁶ *Ibid.*, 275.

⁶⁷ *Ibid.*, 282 and 290.

Similar shifts in the jurisprudence were also seen in Chapter Two, such as with the evolution of JCE jurisprudence. However, as argued there and above, the *drive* behind these shifts extended beyond a consideration of the witnesses' experiences, but was motivated by both the desire to expand the jurisprudence (as a valuable act in and of itself) and because of the law's need to adapt in order so that it could maintain its authority and control as a legitimate response to a particular 'problem'. Pressure to do so both originated from within the apparatus, as it sought (as all apparatus' do)⁶⁸ to expand its sphere of influence over the objects and subjects that fell within its purview.⁶⁹ But this was also the result of 'political' pressure for the court to adapt in this manner. It is, for instance, important when understanding the Akayesu decision concerning rape to note the pressure for the court to recognise this type of crime, from both outside the courtroom (from human rights groups) and inside the courtroom (principally from Judge Pillay).⁷⁰ The *need* to adapt in this manner was, however, most clearly seen in the more than dubious decision in the Akayesu judgement that argued that the Tutsis were a protected group under the Genocide Convention, *despite* not being easily defined as either an ethnic or racial group. The judges circumvented the issue by arguing that the *intention* of the drafters of the UNGC had been to protect all stable and permanent groups (despite that religious and national groups were clearly not 'permanent' identities).⁷¹ Without adapting in this manner, the law would have been incapable of capturing the 'crime of crimes'—genocide (exactly what it was set up to do)—and its authority and legitimacy would have come into doubt.

⁶⁸ See also, Hagan and Levi, 'Crimes of War' (see Intro., n. 86), 1504.

⁶⁹ Foucault, 'The Confession of the Flesh' (see Intro., n. 113), 195.

⁷⁰ There is also the importance here again of the idea of the introduction of 'human rights methodologies' as argued by Danner, 'Guilty Associations' (see Chap. Two, n. 8) 103–20, 132–9 and 145–6.

⁷¹ The difficulty here came from the: extent to which both groups shared a cultural, religious and linguistic heritage; fluidity, at various points in history, of the division between Hutus and Tutsis; the lack of distinct physical or 'hereditary' traits; and the level of inter-marriage between the groups. Most of this problem, however, came from the judges' conservative reading of ethnicity and race, which were looking for 'objective' markers of these identities that could prove their fixed and permanent existence. ICTR–96–4–0459/1, 209–210 and 281; and Wilson, *Writing History* (see Intro., n. 31), 170–91.

As such, whilst acknowledging the role played by the witnesses in this process, I am cautious about presenting this as a process that was orientated around the needs of those that suffered during the genocide, even when the decisions rendered appeared, on the surface, to reflect ‘progressive’ rulings that were pursued in the interests of the affected community. Rather, on balance, it seems that the judges constructed these judgements in order to reflect their legal, and to an extent political, interests. A number of other factors from the legal findings of the judgements will offer support for this position.

First, the manner in which the judges assessed sexual violence testimony more generally needs to be considered, which demonstrates the overall *negative* effects of how the judges interpreted this type of evidence, which was something that became more heightened as the trials went on. In a number of the court’s findings there was, again, a sense that sexual violence evidence was treated differently from evidence relating to other forms of violence.⁷² It appeared as though during the judgements the judges continued to apply a different—and *higher*—standard of proof when assessing evidence of sexual violence crimes.⁷³

Several decisions at trial level evidence this, including those made during *Kajelijeli* and *Nizeyimana*.⁷⁴ However, in order to demonstrate the impact that this could have on a trial’s

⁷² Other evidence that this was treated with indifference can be found in the fact that not a single guilty plea contained a sexual violence charge. This is despite the fact a number of the initial indictments against these defendants contained charges concerning sexual violence. OTP ICTR, ‘Prosecution of Sexual Violence’, Appendix B.

⁷³ MacKinnon, ‘Sexual Violence’ (see Intro., n. 93), 214–5.

⁷⁴ *Ibid.*, 214–5. Judge Ramarosan’s dissenting decision in *Kajelijeli* captured their dissatisfaction with the majority’s decision. ‘In conclusion, and in the light of the foregoing, there is *substantial, specific and corroborative* evidence to sustain the allegation that Kajelijeli committed the crime with which he is charged, and that, consequently, he is responsible for the rapes perpetrated on women’. (Emphasis added). *Prosecutor v.*

outcome, I will discuss a decision from *Rukundo* that, whilst coming from an appeal judgement, is indicative of how this type of evidence was treated.⁷⁵ In the *Rukundo* judgement, Rukundo, a military chaplain in FAR, was found guilty of genocide, in part, for sexually assaulting Witness CCH. The chamber found that at Kabgayi Parish:

Rukundo forced sexual contact with [Witness CCH] by opening the zipper of his trousers, trying to remove her skirt, forcefully lying on top of her and caressing and rubbing himself against her until he ejaculated and lost his erection. [The sexual nature of his actions can be discerned from] Rukundo's actions and words, such as telling her that if she made love with him he would never forget her [...].⁷⁶

The chamber also found that the assault had been coercive and caused serious mental harm and that Rukundo possessed the necessarily special intent.⁷⁷ The appeals chamber, however, found that the trial chamber had been wrong to find Rukundo guilty of committing genocide for this act:

[T]he Appeals Chamber [...] finds that *no reasonable trier of fact* could find that the only reasonable inference available from the evidence was that Rukundo possessed genocidal intent in relation to the sexual assault of Witness CCH [...]. (Emphasis added.)⁷⁸

The reason the appeals chamber found this to be the case was because they rejected the trial chamber's reliance on Rukundo's utterance that he could not save Witness CCH because she was related to *Inyenzi* (a word strongly associated with the Tutsis during the genocide) to evidence Rukundo's intent and instead accepted the defence's argument that the assault was 'unplanned and spontaneous'.⁷⁹ Bearing in mind also the extremely high threshold that must

Juvénal Kajelijeli, Case No. ICTR-98-44, ICTR-98-44A-0320/1, *Judgment and Sentence*, 01/12/2003, 14. Head of Appeals (2015); Senior Member of ICTR Office of the Prosecutor (2015).

⁷⁵ This also came up in a number of my interviews. Deputy Appeals Chief (2015); Senior ICTR Appeals Attorney 2 (2015); and Head of Appeals (2015).

⁷⁶ *Prosecutor v. Emmanuel Rukundo*, Case No. ICTR-01-70, ICTR-01-70-0393, *Judgment and Sentence*, 27/2/2009, 115.

⁷⁷ *Ibid.*, 117-8 and 172.

⁷⁸ *Prosecutor v. Emmanuel Rukundo*, Case No. ICTR-01-70, ICTR-01-70-0400/1, *Appeals Judgement*, 20/10/2010, 76.

⁷⁹ *Ibid.*, 76.

be attained for an appeal chamber to overturn a trial chamber's decision (they must determine that *no reasonable* trier could have found this to be the true), it requires a significant leap of faith to believe that this would have been overturned if this had been *any other act of violence*.⁸⁰ Rather, there was the underlying suggestion that this act could have been perpetrated out of some form of inner lust; a natural desire that men have, which cannot be controlled, and so should not be punished, which was, in part, further evidenced by the judge's acceptance that this was—and *despite his utterances*—a 'spontaneous' act.⁸¹ Because Rukundo had only been charged with genocide for his assault of Witness CCH—which the court accepted as fact—he was acquitted of all criminal wrong-doing in this instance. This type of treatment of sexual violence evidence, along with the OTP's approach, is, I believe, largely to blame for the Tribunal's poor record in prosecuting sexual violence crimes.⁸²

There was, moreover, a series of problematic normative assumptions that underpinned the judges' reasoning as to why sexual violence could be considered an act of genocide. Some of these reinforced the centrality of patriarchy within society, as the women's role was seen as maintaining the male's lineage, and rape was seen as an attempt 'to reduce the "purity" of the Tutsi race'.⁸³ No matter which lens—whether genocide, crimes against humanity or war crimes—was used, moreover, the crime was always seen as being committed against a wider

⁸⁰ MacKinnon, 'Sexual Violence', 215.

⁸¹ See also Beth Van Schaack, 'Engendering Genocide: the Akayesu Case before the ICTR', (Santa Clara Law, 2008), 12–3 and 23.

⁸² A former member of the appeals office in the OTP referred to this decision as 'a bit barny'. Appeals Attorney 2 (2015); and Head of Appeals (2015). Wilkinson noted that her impression was that there were (and are) a lot of people that didn't take sexual violence seriously and continued to think it's just the case of some women trying to get other men into trouble, and stated, 'That's how I would explain Rukundo'. Deputy Appeals Chief (2015). See also MacKinnon, 'Sexual Violence', 214–5; and S/2015/884, 15.

⁸³ This was due to the fact that one of the reasons why rape could be seen as genocide was because in a patriarchal society like Rwanda where the ethnicity of an offspring is decided by the father's ethnicity, then when a Hutu man rapes a Tutsi women this is seen as an attempt to produce offspring *not* of the ethnicity of the Tutsi woman's partner. ICTR-96-4-0459/1, 176; ICTR-00-61, ICTR-00-61-0068/1, *Gatete – Decision on Prosecutor's Request for Referral to the Republic of Rwanda*, 17/11/2008, 10; and Dixon, 'Rape as a Crime in International Humanitarian Law', 704–5.

group, rather than against a woman (or, for that matter, women).⁸⁴ This decentring of women as the primary target of these crimes supports MacKinnon's suggestion that '[w]hat happens to women is either too particular to be universal or too universal to be particular, meaning either too human to be female or too female to be human'.⁸⁵ As MacKinnon also argues, the designation of the wider group as the target of the violence, detached the violence that women experienced in war from that which they experienced in 'peace' and allowed it to be considered an aberration (just an unfortunate by-product of war) that in no way was related to the patriarchal structure of society. Rather, as MacKinnon argues, the violence perpetrated in war should be seen as a *continuation* of the violence that women suffer in peace.⁸⁶

These accounts were only made worse by the apparatus' production of victimhood, which remained strongly gendered as women—along with children—became the ultimate symbol of victimhood and therefore passivity.⁸⁷ This was despite the fact that both groups played a central role in how the genocide unfolded, as previously discussed.⁸⁸ As such, when the

⁸⁴ Campbell, 'Victims' (see Chap. Two, n. 61), 345. For a similar critique see Walsh, 'Gendering International Justice' (see Intro., n. 92), 31–65.

⁸⁵ MacKinnon, 'Crimes of War' (see Intro., n. 93), 60.

⁸⁶ MacKinnon, 'Crimes of War', 60–6.

⁸⁷ A/52/568, *Strengthening of the Coordination of Humanitarian and Disaster Relief Assistance of the United Nations, including Special Economic Assistance: Special Economic Assistance to individual Countries Or Regions: International Assistance to Rwanda for the Reintegration of Returning Refugees, the Restoration of total Peace, Reconstruction and Socio– Economic Development: Report of the Secretary-General*, 05/11/1997, 4; S/PV.3968, 3968th Meeting, 21/01/1999, 3. 'International humanitarian law enshrines the norm that needy civilians, and in particular women and children, have the right to receive humanitarian assistance' (p. 9). This, again, matched the discursive imaginings expressed in discussions surrounding the Tribunal. See E/CN.4/1997/61, *Question of the Violation of Human Rights and Fundamental Freedoms in any Part of the World, with Particular Reference to Colonial and Other Dependent Countries and Territories Report on the Situation of Human Rights in Rwanda Submitted by Mr. René Degni-Ségui, Special Rapporteur of the Commission on Human Rights, Under Paragraph 20 of Resolution S-3/1 of 25 May 1994*, 20/01/1997, 8. 'At the same time, the heightened vulnerability of minorities, women, children, prisoners and detainees, displaced persons, refugees and others, which is evident in all conflict and post-conflict situations, brings an element of urgency to the imperative of restoration of the rule of law.' What is particularly interesting about this comment is that each of the identities here that are treated as vulnerable are temporary ones, with the *sole* exception of women and children. S/2004/616, *the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies: Report of the Secretary-General*, 23/08/2004, 3.

⁸⁸ E/CN.4/1998/54/Add.1, *Further Promotion and Encouragement of Human Rights and Fundamental Freedoms, including the Question of the Programme and Methods of Work of the Commission Alternative Approaches and Ways and Means within the United Nations System for Improving the Effective Enjoyment of*

inevitable passivity of women within these narratives was combined with the notions of patriarchy that underpinned some of these legal definitions, then women were rendered as being *reliant* on those structures and power relations, which made the violence against them a possibility in the first place, for their security, thus *reproducing* the vitality and *legitimacy* of these structures and power relations.⁸⁹

If anything, these problems seemed to become more acute with time, as seen with how the court's jurisprudence on sexual violence developed. Whilst *Akayesu* ruled that consent was an irrelevance for crimes that fell within the jurisdiction of the Tribunal, the *Gacumbitsi* appeals judgement (2006) (confirming the trial chamber's 2004 ruling) found that a victim's lack of consent, and *the perpetrators knowledge* that this consent was absent *were* legally relevant and had to be established by the prosecution.⁹⁰ With this, the progressive rulings of the early years were replaced with more conservative and *potentially harmful* jurisprudence. This pattern could be seen elsewhere, particularly concerning the jurisprudence dealing with command and collective responsibility, which became a particularly contentious issue when Judge Harhoff was dismissed from the Appeals Chamber.

Judge Harhoff was effectively dismissed after a private letter he had written was leaked. This revealed his concerns that the appeals chamber (under the influence of President Meron—head of the appeals court) was attempting to restrict the applicability of collective modes of participation—JCE and superior responsibility—after being pressured by outside forces to do

Human Rights and Fundamental Freedoms Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences, Ms. Radhika Coomaraswamy Addendum Report of the Mission to Rwanda on the Issues of Violence Against Women in Situations of Armed Conflict, 04/02/1998.

⁸⁹ Franke, 'Gendered Subjects of Transitional Justice' (see Intro., n. 48), 823–5; and Dixon, 'Rape as a Crime in International Humanitarian Law', 704–5.

⁹⁰ Patricia Sellers, 'The Prosecution of Sexual Violence in Conflict: The Importance of Human Rights as Means of Interpretation' (see Internet Materials), 23–3.

so.⁹¹ It was thought that this pressure was exerted because there was a fear amongst certain nations (namely the US and Israel) that the current jurisprudence might overly restrict military operations during conflict, as it might make it easier to hold military commanders and heads of state responsible for criminal acts committed by subordinates.⁹² This demonstrated the political, and—to borrow from Kennedy—ideological nature of adjudication, whether this is from a more conventional ‘realpolitik’ perspective or by pointing to international criminal justice’s role in *managing* violence within the international system (rather than seeking to eradicate it). Indeed, as President Meron stated, the purpose of international humanitarian law is to ‘diminish the evils of war, as *far as military requirements permit*’ (emphasis added).⁹³ This, along with the rulings on sexual violence discussed above, resonates with the concerns raised by Edkins and Dauphinee, as set out in the introduction, about the role played by law in perpetuating the legitimacy of certain forms of violence within the international system.⁹⁴

Martinez and Danner also noted these shifts in the jurisprudence. Interestingly, they argued that the initially more expansive provision for these modes of responsibility (which found little support in the jurisprudence) represented, as previously mentioned, the intrusion of Human Rights style methodologies into the judicial decision making process, where expansive interpretations of the law were permissible in order to ensure that the rights and interests of victims were adequately protected.⁹⁵ As such, Martinez and Danner placed less

⁹¹ The letter can be found here: <http://www.bt.dk/sites/default/files-dk/node-files/511/6/6511917-letter-english.pdf> (last accessed 18/08/2017).

⁹² One of my interviewees explicitly rejected Harhoff’s claims, stating that whilst he did not discount that personnel preference influenced decision making (i.e. that a particular judge may not like command responsibility) this was not enough evidence to show that they were ‘under orders’. Senior ICTR Appeals Attorney 2 (2015).

⁹³ Theodor Meron, ‘The Humanization of Humanitarian Law’, *American Journal of International Law* 94:2 (2000), 243. See also p. 241.

⁹⁴ Dauphinee, ‘War Crimes and the Ruin of Law’ (see Intro., n. 86).

⁹⁵ Danner, and Martinez, ‘Guilty Associations’, 103–20, 132–9 and 145–6.

emphasis on the role of external states in pressuring the court to shift the jurisprudence in this way (although this is acknowledged) than they did arguing that this move rebalanced the proceedings to favour the defendant.⁹⁶ Either way, however, what this suggests is that, as with the issue of consent, over time what began as ‘progressive’ jurisprudence with JCE and command responsibility became increasingly more conservative in nature, and that the law developed in a manner that ran *against* the interests of the (potential future) victims.⁹⁷

What is more, at points within these final decisions it became, again, apparent that these accounts pulled away from the witnesses’ experiences and, as such, mark further evidence of White’s idea of ‘justice as translation’.⁹⁸ For instance, whilst some of the witnesses’ testimony concerning sexual violence demonstrated how patriarchal structures within Rwandan society created the terrain whereby this violence could take place (as was seen particularly with Witness NN’s testimony, discussed in Chapter Three), as argued above, the courts’ legal description saw that it was, in fact, *these structures that had been harmed* as a result of the violence.⁹⁹ This issue of ‘translation’ was seen elsewhere within the legal findings sections of the judgement as the meaning of the violence was increasingly reinterpreted as the law’s understanding of violence took hold. For instance, in the court’s final account, due to the court’s legal understanding of genocide, as previously discussed, all Hutus were prevented becoming victims of the genocide as the genocide was seen as being directed solely against the Tutsis simply because of their ethnicity.¹⁰⁰ This understanding of

⁹⁶ *Ibid.*, 96–102 and 189.

⁹⁷ Beatrice Bonafé, ‘Finding a Proper Role for Command Responsibility’, *Journal of International Criminal Justice* 5:3 (2007), 604–12.

⁹⁸ See Intro., n. 35.

⁹⁹ Dixon, ‘Rape as a Crime in International Humanitarian Law’, 704–5.

¹⁰⁰ ICTR-96-4-0459/1, 173–174.

genocide contributed towards the construction of an ethnocentric understanding of the violence, and of victimhood and perpetratorhood.¹⁰¹

The Tribunal's account of violence was thus increasingly decontextualised, and the specificity of these individual acts of violence become subordinated to the judges' interest in what was generalisable about them and how they related to the law. The locally situated, personal experiences of violence that had featured in the witness's testimonies became valuable only to the extent that they evidenced the various components required to establish that a particular crime occurred.¹⁰² As a result, it becomes apparent that not only did the court project particular imaginings of violence, but that these could also sit at odds with the witnesses' narratives that the court relied upon.

This sense of the problematic nature of some of these translations, along with the way in which this side-lined the position of the victim, come together in one final finding here. As has been argued throughout, not just anyone could be a victim or perpetrator within the courtroom. Particularly within the judgements it became apparent, however, that these categories co-constituted each other; to be recognisable as a 'victim that mattered' an actor had to be attacked or harmed by a 'perpetrator that mattered'. A victim only became so in a legal sense if they had been the target of a crime contained within the courts statute, which had been charged within the indictment and executed by someone that was a recognisable

¹⁰¹ See, for instance, the discussion here about Akayesu's intent and the effect that this had on the narrative constructed by the court. *Ibid.*, 176–7. See also the depoliticising of the judges' account of Akayesu's participation in the genocide. *Ibid.*, 54–5. What is additionally interesting here is that again the judges in finding Akayesu guilty of genocide conflated the local and the national level of the violence in Rwanda as necessarily being the same as a result of 'targeting the Tutsis'. This was despite *no* evidence being provided to demonstrate that there was a link, *and* that the judges had previously found that the prosecution had failed to prove that the Murambi meeting on 18 April 1994 was used to encourage resisting bourgmestres (like Akayesu) to participate in the genocide— the only connection linking Taba to the national plan. It was, then, simply enough that Tutsis were targeted. ICTR-96-4-0459/1, 176.

¹⁰² *Ibid.*, 179.

perpetrator who was also connected to the accused. What also became clear was that the description of violence within the court's account was *not* determined by how the victim experienced the crime, but rather by how the perpetrator's actions and intentions were interpreted. Hence if a perpetrator committed an act of violence, but was believed to not possess genocidal intent, then the victim would not be seen as a victim of the genocide *no matter how the witness experienced or understood the violence*. This, as such, questions the extent to which a court could ever be considered a 'victim-centred' space.

To take one example of this. During *Cyangugu*, one of the key sites of violence was the Cyangugu military camp where Imanishimwe was the commander. Abducted Tutsis were taken to the camp where they were kept in cells and then taken out on a regular basis and shot under Imanishimwe's orders. The court accepted all of this, but found that, because the soldiers had referred to the Tutsis as *Inkotanyi*, they were killed because they were genuinely suspected of being members of the RPF.¹⁰³ It is irrelevant here whether or not the perpetrators really did see these people as members of the RPF. What is important is that whether or not this act was seen as genocide, a crime against humanity or a war crime was dependent on the perpetrator's perspective of the violence and *not* the victim's experience.¹⁰⁴

This chapter has shown how over the course of the judgement the legal (and sometimes political) concerns of the courtroom took precedence over all others, as the legal actors of the court gained greater hold over the accounts of violence. Watching an appeals process in

¹⁰³ ICTR-99-46-0599/1, 109 and 182-4.

¹⁰⁴ William Schabas, 'The Law and Genocide', in Moses and Bloxham, *The Oxford Handbook of Genocide Studies*, 133.

person¹⁰⁵ made it clear just how much the content and meaning of the violence slipped into irrelevance at that stage.¹⁰⁶ This was due to the fact that at this point the focus became almost solely fixated on the ‘rules of the game’. For, to launch an appeal, the two criteria that had to be met were for an alleged error of fact or law to have occurred in the trial judgement, which had further led to a miscarriage of justice. Even with claims of errors of fact, due to the standard of error being that *no reasonable trier of fact* could have reached the trial chamber’s conclusion, the aim became to show that the processes through which the court made their findings were at fault, for instance by showing that the trial judges had not properly considered the credibility of a witness.¹⁰⁷ It was not, then, about embellishing the story of the violence told during the trial, but rather querying the manner and processes through which it had been told. Here, then, the language through which the violence was discussed shifted almost completely to being focused *on the law* itself, and the deontological nature of the law came to the fore.

Conclusion

This chapter has explored the construction of the archive from the judges’ perspective. It has first shown the importance again of the concepts of the ‘conditions’ and ‘processes’ of truth, as legal and non-legal discourses (perhaps most particularly gender) came to shape the judges final account of violence, and how these records were also produced as a result of the different roles ascribed to different actors, and the processes the court went through, when

¹⁰⁵ I sat in on the appeals hearings for *Butare. Prosecutor v. Pauline Nyiramasuhuko, Joseph Ndayambaje, Sylvain Nsabimana, Arsène Shalom Ntahobali, and Alphonse Nteziryayo (Butare)*, Case No. ICTR-98-42.

¹⁰⁶ ICTR-99-46, TRA002960, [Cyangugu] – Ntagerura et al – Redacted Transcript of 06/02/2006 – Appeals Hearing, 06/02/2006, 5.

¹⁰⁷ For an example of this see the Prosecution’s arguments on appeal about the piecemeal approach of the court in *Cyangugu*. ICTR-99-46-1735/2, *Cyangugu – Appeal Judgement*, 07/07/2006, 57. See also ICTR-96-4, ICTR-96-4-0868/1, *Akayesu – Appeal Judgement*, 01/06/2000, 70.

constructing its final ‘truth’. It demonstrated, as mirrored in the preceding chapters, the complex nature of the relationships between the witnesses and the legal actors of the court in this process. First it showed how the judges adapted both the jurisprudence of the court *and the way in which the court approached the evidence* to the witnesses’ testimony *and ways of testifying*—meaning that the witnesses appeared to leave a strong mark on the judgements and the archives.

However, again there was the suggestion that the idea of witness empowerment needs to be tempered. First, the moments where the judges appeared to offer greater scope for the witnesses to influence the trial process were also those moments when it in many ways benefited the judges, and the Tribunal more generally, to do so. As was argued, this enabled the law to remain relevant as it expanded and evolved so that it could continue to capture the violence. This was particularly clearly demonstrated by the dubious finding that the Tutsis, as a ‘stable and permeant group’, were protected by the Genocide Convention. This is not to say that the needs of others were never met or taken into consideration. There were undoubtedly moments (for instance, with the judicial notice and some of the initial rulings concerning sexual violence) where the Tribunal reflected the needs and interests of the post-genocide Rwandan society (and also the ‘international community’ more generally). However, as will be further explored in the following chapter, overall this chapter has suggested that these wider interests were predominantly taken into consideration, or *allowed* to affect the process, when they aligned with the needs of the legal actors within the courtroom.

This might not be of such importance (maybe the tangential benefits would be enough) if it weren’t for the *negative* consequences of this approach. In this respect, the chapter showed

that the judgements not only produced accounts that often did not match with the witnesses' *own testimony*, but also resulted in politicised accounts (and ultimately a politicised archive). This was seen in the effects of gendered and patriarchal discourses on the legal outcomes of these trials, along with the more obtuse political interventions from the outside, both of which affected the direction that the jurisprudence progressed in. This only reinforced the manner in which the ICTR appeared, at points, to be have worked *against* the interests and needs of exactly the constituencies that they were created to help.

A final question remains to be addressed here. Throughout this dissertation, I have noted a shift in the way in which different actors approached the trials and the impact that this had on the archive. As yet, however, I have not explored why this was the case. The final chapter will address this question, and in doing so it will also set out the way in which the courts strategic function changed over time. With this, moreover, we return full circle to start of the dissertation as I explore how it was that the archive came to be seen almost solely for its legal and bureaucratic value.

Chapter Six: The Politics of International Criminal Justice

Introduction

During the early years of the Tribunal, the prosecution and judges pursued the trials in a way that tried to, in addition to securing verdicts against the accused, achieve several extra-judicial goals, such as producing an accurate account of the violence that properly reflected the extent of the genocide. As has been shown, over the course of the Tribunal's history, however, these concerns appeared to be replaced by a more explicit and narrow focus on the trials as sites of law and nothing more. This resulted in more focused and streamlined procedures, with the legal actors showing a greater desire to intervene and control the proceedings. Whilst this arguably had a positive impact on the trial practice from a legal perspective, a consequence was that witnesses were increasingly treated in a utilitarian fashion, as what was of legal value was extracted with little thought given to much else. This affected both the types of records produced for the archive (thinner and more heavily framed by law) and also *how* they were constructed—increasingly with less input from the witnesses. The question is, *why* did this change occur? This will be examined in this chapter in two parts. The first looks at the way in which over time both substantive and procedural law became more settled as the novelty of enacting international criminal law wore off. This meant that it became possible for the legal actors to exert greater control over the proceedings so that they increasingly mimicked what might be considered a more typical criminal trial (when compared with municipal law). The second looks at the effects of the interventions of

external actors, particularly the UNSC, in influencing the way the Tribunal functioned. This therefore also examines how external actors (as discussed in Chapters Three and Five) worked to shape the archive so that it came to reflect their interests. The final section of this chapter revisits the issues addressed at the start of the dissertation, as I consider the effects of this on the Tribunal's strategic function.

Legalisation

When the Tribunal opened in 1996 with the Akayesu trial, the legal actors had little to draw on in terms of substantive and procedural legal precedent. For this, they were almost completely restricted to the jurisprudence created as a result of the Nuremberg trials, the ICTY's RPE, which formed the basis of the ICTR's RPE, and relevant domestic law. Many aspects of the Tribunal's statute were described and explored for the first time within the first judgements, producing, in some cases, completely new legal definitions.¹ It was clear that in certain instances the Tribunal was in fact *creating substantive law*. Whilst these decisions on occasion drew on municipal jurisprudence, they were performative acts of law-making: *by declaring the law to be a certain way it became so*. This could be seen in judicial decisions, as discussed in previous chapters, concerning rape as an act of genocide and the introduction of JCE.²

¹ ICTR President (2015).

² The performativity of the law was, of course, never acknowledged by the court. In concealing this the judges, on occasion, presented some very spurious arguments, such as 'the Appeals Chamber wishes to clarify that when it interprets certain provisions of the Statute or the Rules, it is merely identifying what the proper interpretation of that provision has always been, even though it was not previously expressed that way'. ICTR-99-46-1735/2, 42. See also Sanford Levinson, 'The Rhetoric of the Judicial Opinion', in *Law's Stories*, ed. Peter Brooks *et al.* (London: Yale University Press, 1996), 188-90; and Frederic Mégret, 'International Criminal Justice as a Juridical Field' (see Intro., n. 88).

Over time, however, the law became more settled. Its appearance as a timeless set of rules was particularly strengthened through the constant reinforcement that ‘the law was as it was’ through the citation (in increasing frequency as the trials went on) of prior rulings as ‘precedent’.³ This offered support for the judges’ particular interpretation of what constituted a crime, as set out in the statute and then developed through subsequent rulings, and gave the appearance that their interpretation was a declaration of a simple truth of *what the law really was*. It was possible to see the ‘ripple effects’ of declarations of what the law was as they provided a framework through which other episodes of violence could be interpreted. For instance, *Akayesu*’s finding that rape could constitute an act of genocide opened up the possibility that other trials could introduce sexual violence evidence, in the knowledge that it now *could* be accepted as an act of genocide.⁴ As the law settled, this increasingly ‘predetermined’ how evidence needed to be presented in order to be accepted as representative of a crime. Indeed, two things were notable when comparing the *Akayesu* (1998) and the *Gatete* (2011) trials. Firstly, in the *Akayesu* closing and judgement greater attention was paid to interpretations of law—interpretations that *relied* on the witnesses’ narratives in order to justify them—in comparison to *Gatete*. This suggested that significant areas of law had become accepted as *the* legal interpretations of these crimes by the end of the Tribunal.⁵ Second, as suggested in Chapters Two and Five, in *Gatete* the witnesses were questioned in a far more direct manner, as greater control was exerted over the proceedings

³ Senior Appeals Attorney (2015); and Mégret, ‘International Criminal Justice as a Juridical Field’.

⁴ *Prosecutor v. André Ntagerura et al.*, Case No. ICTR-99-46 (hereafter ICTR-99-46), TRA000434/2, [Cyangugu] – *Ntagerura et al* – Redacted Transcript of 14/02/2001, 14/02/2001, 13.

⁵ See *Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4 (hereafter ICTR-96-4), CONTRA001236, *Akayesu* – Transcript of 23/3/1998, 23/03/1998, 6–46; ICTR-96-4-0459/1, *Akayesu* – Judgement, 02/09/1998, 123–159. Indeed, it is notable that there is no discernible discrete reference to interpretations of the law in the *Gatete* closing. *Prosecutor v. Jean Baptiste Gatete*, Case No. ICTR-00-61 (hereafter ICTR-00-61), TRA005592, *Gatete* – Redacted Transcript of 08/11/2010, 08/11/2010. Similarly, whilst the *Akayesu* judgement had a separate section for ‘The Law’ running for 36 pages, there was no similar section in *Gatete* and ‘what the law was’ was dispensed within in a relatively concise fashion by drawing heavily on previous key rulings.

by prosecution, defence and the judges, when compared to *Akayesu*.⁶ This suggests that since the legal agents knew what was needed to establish that a crime had occurred, they could ask more direct questions of the witnesses.⁷ This again meant that the witnesses' role changed as they became limited in their ability to determine the content of the court's accounts.

This ripple effect was similarly present within the Tribunal's procedural decisions. These changed over time in order to provide the legal agents, but particularly the judges, with greater influence over how the trials were conducted. A key shift in this respect was the judge's intervention over the prosecution's indictment policy, as was seen in their rulings during *Cyangugu*.

The prosecution encountered numerous problems with their indictment from the outset of *Cyangugu*, as it was challenged in each of the defendants' preliminary motions, on the grounds that it was so vague that the defendants could not even detect what was being charged.⁸ The defendants argued that some of the prosecution's charges were incompatible with each other and that with others, most notably conspiracy, the prosecution had failed to present sufficient material facts to establish a *prima facie* case against the accused.⁹

⁶ A particularly good example of this new style of questioning can be seen in the examination-in-chief of Witness BBJ during *Gatete*. ICTR-00-61, TRA005459, *Gatete – Redacted Transcript of 05/11/2009*, 05/11/2009, 14–30.

⁷ Here it was striking that, compared with *Akayesu*, the prosecution in *Gatete* wasted no time and during their examinations and jumped straight to asking questions concerning the allegations in the indictment. For an example see *Ibid.*, 14–30.

⁸ *Prosecutor v. Andre Ntagerura*, Case No. ICTR-96-10 (hereafter ICTR-96-10), ICTR-96-10A-0194, *Ntagerura – Preliminary Motion (Defects in the Indictment)*, 21/04/1997, 5–11; and *Prosecutor v. Emmanuel Bagambiki et al.*, Case No. ICTR-97-36 (hereafter ICTR-97-36), ICTR-97-36-00195, *Bagambiki – Audio Recording of 25/03/98 – AM*, 25/03/1998. Rule 40 *bis* extended the amount of time the prosecution had to submit their indictment by a further 30 days. This could be relied upon no more than three times for any indictment.

⁹ That is, even if all of the facts, as set out, were proven correct, then there would still be insufficient evidence to hold the accused to account. ICTR-96-10A-0194, 8–9; and ICTR-97-36-0043, *Preliminary Motions*, 18/02/1998, 4.

Imanishimwe's defence stated that, from what they could work out, Imanishimwe was 'accused of living in Cyangugu',¹⁰ and Ntagerura's defence went as far as to suggest that the indictment amounted to 'enormous...diarrhoea...'.¹¹

Most of these motions were successful and the judges ordered the prosecution to amend the indictments to make both the charging and the statement of facts clearer.¹² The prosecution to a large extent complied with these orders, despite various attempts to side-step their obligations.¹³ This issue, however, reached a climax in the judgement. As the very first issue addressed by the court, the judges effectively ruled that the prosecution's entire indictment was impermissibly vague, to the extent that it was impossible to be cured through post-indictment disclosure.¹⁴ This ruling carried with it a warning to the prosecution concerning their indictment policy: from then on, the chamber would have zero tolerance for the prosecution's indictment strategy, which at that point relied on vague indictments that could be altered as a result of new evidence found either through on-going investigations or the

¹⁰ ICTR-97-36-00195, 25/03/1998.

¹¹ ICTR-99-46-01002, *Ntagerura – Audio Recording of 10/08/99 – AM*, 10/10/1999.

¹² ICTR-96-10, ICTR-96-10A-0208, *Ntagerura – Decision on the Preliminary Motion Filed by the Defence Based on Defects in the Form of the Indictment*, 28/11/1997, 6-7; ICTR-97-36, ICTR-97-36-0062, *Imanishimwe – Bagambiki – Munyakazi – Decision on the Defence Motion Regarding Defects in the Form of the Indictment*, 24/09/1998, 4; and ICTR-96-10, ICTR-96-10A-0224, *Ntagerura – Amended Indictment*, 29/01/1998.

¹³ ICTR-99-46, TRA002066/1, *[Cyangugu] – Ntagerura et al – Redacted Transcript of 12/08/2003*, 12/08/2003, 8-11; ICTR-99-46, TRA000521/2, *[Cyangugu] – Ntagerura et al – Redacted Transcript of 05/03/2002 – Motion*, 05/03/2002, 86, 113-4, 140, 148; and ICTR-99-46, TRA000552/2, *[Cyangugu] – Ntagerura et al – Redacted Transcript of 06/03/2002 – Oral Hearing on the Motion of Imanishimwe for Acquittal on Conspiracy Count*, 06/03/2002. The matter appeared on a number of other occasions: during the hearing for the prosecution's motion to join the two indictments, where the defence unsuccessfully argued that the prosecution had failed to submit an amended indictment as ordered by the court; and again, at the end of the prosecution's case where Imanishimwe's defence successfully argued that they did not have a case to answer over the conspiracy charge. ICTR-96-10, ICTR-96-10A-0215, *Ntagerura – Prosecutor's Motion to Order Interpretation of Decision No. ICTR-96-10a-I of 11/28/1997*, 29/12/1997.

¹⁴ ICTR-99-46-0599/1, *Trial Judgement – the Prosecutor v. André Ntagerura Emmanuel Bagambiki Samuel Imanishimwe*, 25/02/2004, 15-20; and ICTR-99-46-1735/2, 21, 25 and 41. This, then, supported the defences' position adopted in their closing briefs. ICTR-99-46, TRA002063/1, *[Cyangugu] – Ntagerura et al – Redacted Transcript of 13/08/2003*, 13/08/2003, 7-15; and TRA002066/1, 13-7.

witnesses' in-court testimony.¹⁵ Judge Dolenc, in his separate but concurring opinion, took this argument even further, finding that the prosecution's conduct was so problematic that the whole of the indictment should have been thrown out and the case along with it.¹⁶ As such, the judges made it clear that the indictment policy had to change so that the defence could be adequately warned of the charges they faced.

Indeed, several factors suggest that it was, to a certain extent, the prosecution's conscious decision to proceed under a vague indictment in *Cyangugu*.¹⁷ First, whilst the prosecution clearly submitted the indictment in a hurry, as it was filed under Rule 40 *bis*, the additional information contained within the indictment's supporting document that was *not* included in the main indictment showed that more information could have been provided.¹⁸ Second, the prosecution submitted an amended indictment in December 1999, in clear acknowledgement of the defects in the current indictment, but subsequently withdrew it.¹⁹ Part of the decision not to amend was motivated by an OTP policy that meant the prosecution should only alter an indictment where absolutely necessary to ensure that the trials proceeded at apace.²⁰ However, at the very least the prosecution tested their luck and hoped that the judges would allow for the additional evidence and information, that the prosecution *knew they had*, to

¹⁵ ICTR-99-46-0599/1, 18–20

¹⁶ Judge Schomburg made a similarly strong statement on appeal, arguing that the whole of the Ntagerura indictment should also be thrown out. ICTR-99-46-1735/2, *Cyangugu – Appeal Judgement*, 07/07/2006, 131.

¹⁷ Whilst not referring to *Cyangugu* directly, a senior trial attorney noted that this appeared to be the indictment strategy used in early trials. Appeals Attorney 2 (2015); and Deputy Appeals Chief (2015).

¹⁸ ICTR-96-10, ICTR-96-10-0212, *Ntagerura – Decision – Confirmation of the Indictment*, 10/08/1996; ICTR-99-46, TRA002960, [*Cyangugu*] – *Ntagerura et al – Redacted Transcript of 06/02/2006 – Appeals Hearing*, 06/02/2006, 73–4. A/54/634, *Financing the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994: Report of the Expert Group to Conduct a Review of the Effective Operation and Functioning of the International Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda*, 22/11/1999, 55–7; and ICTR-96-10, ICTR-96-10A-0014, *Ntagerura – Indictment – Supporting Material – Supporting Documentation*, 09/08/1996.

¹⁹ ICTR-96-10, ICTR-96-10A-0272, *Ntagerura – Prosecutor Request for Leave to File an Amended Indictment*, 02/12/1999, 4–5.

²⁰ Head of Appeals (2015).

enter the courtroom. It seems unlikely that they would have proceeded with the original indictment had they expected the judges to react so adversely to the indictment in the judgement.

This warning, along with similar decisions rendered in *Semanza*, formed part of a broader strategy, which began in the late 1990s and saw the judges gain greater control over the way the trials proceeded, in order to quicken their pace.²¹ This was, moreover, largely successful and as a result of these interventions, along with others discussed below, the prosecution's indictments came to reflect the practice advocated by the *Cyangugu* judges.²² Not only did they move towards using far more exacting and narrowly focused indictments, but they also introduced an indictment committee tasked with ensuring that the indictments were watertight, reflected the current jurisprudence, and that the evidence to be led in court matched the charges in the indictment.²³

²¹ ICTR-99-46, TRA002962, [*Cyangugu*] – *Ntagerura et al* – Redacted Transcript of 07/02/2006 – Appeals Hearing, 07/02/2006, 6–7. This message was, moreover, reinforced by the *Cyangugu* Appeals Chamber, which overturned the trial chambers finding that Imanishimwe was responsible for genocide, because they found that, once again, the prosecution had failed to properly plead this allegation in the indictment.

The Appeals Chamber wishes to express its concern regarding the Prosecution's approach in the present case. The Appeals Chamber recalls that the indictment is the primary accusatory instrument and must plead the Prosecution case with sufficient detail. Although the Appeals Chamber allows that defects in an indictment may be "remedied" under certain circumstances, it emphasizes that this should be limited to exceptional cases. In the present case, the Appeals Chamber is disturbed by the extent to which the Prosecution seeks to rely on this exception. Even if the Prosecution had succeeded in arguing that the defects in the indictments were remedied in each individual instance, the Appeals Chamber would still have to consider whether the overall effect of the numerous defects would not have rendered the trial unfair in itself. ICTR-99-46, TRA003809/1, [*Cyangugu*] – *Ntagerura et al* – Redacted Transcript of 07/07/2006 – Appeals Judgement, 07/07/2006, 13 and 37.

Prosecutor v. Laurent Semanza, Case No. ICTR-97-20, ICTR-97-20-0779/1, *Judgement and Sentence*, 15/05/2003, 17; and Appeals Attorney 2 (2015).

²² Head of Appeals (2015); and Nina Tavakoli, 'Notice of Charges', *ICTR Legacy Event*.

²³ Appeals Attorney 2 (2015).

An additional consequence of these changes was that there was yet a further shift in power away from the witnesses and towards the legal agents. This new stance moved away from the prosecution's initial indictment practice, which allowed the witnesses to take a far greater role with how the indictments and trials were to be formulated, and early trial practice, which had afforded the witnesses a certain amount of space to influence the prosecution's account *during* the trial phase. Rather, witnesses were increasingly used in a more utilitarian manner. This was also reflected in the increasingly interventionist approach adopted by the court's legal agents, which worked to limit and interrupt the witnesses' testimonies, as the court's concern became far more oriented towards producing orderly and efficient trials.²⁴

In addition to the effects of the law becoming more 'settled', this shift in trial practice was driven by a change in Tribunal personnel. At the Tribunal's legacy conference, it was widely accepted that there was a step-change in the 'professionalisation' and also efficiency of the trials as the result of the appointment of Hassan Jallow as prosecutor and Erik Møse as President, in 2003, and Adam Dieng as registrar in 2001.²⁵ These three actors focused their energies on the professionalisation of the Tribunal and the pursuit of more efficient trials.

Some of the key changes to trial practice that they introduced in pursuit of this included the

²⁴ Deputy Appeals Chief (2015); Head of Appeals (2015); and Defence Counsel (2016). Byrne conversely argues that whilst the substantive jurisprudence became more settled over the course of both ad hoc tribunals, there was greater ambiguity, and therefore flexibility, in how procedural rules were applied. However, four points can be made here. First, the trials Byrne analysed fall between 2000-2002, which is prior to the key shifts in practice identified here. Second, Byrne's findings presumes, rather than set out, both that conflicts exist between actors of different legal backgrounds and that they directly affect the way a trial unfolds. Third, even if there was by the end of the ICTR still ambiguity around certain procedural issues, this does not disrupt the findings here that in key areas there was a shift towards great judicial control, such as with the indictments where the judges increasingly demanded greater specificity and clarity. Finally, overall it is clear that trial practice developed in a way directed at achieving quicker trials, something that Byrne too acknowledges. Byrne, 'The New Public Prosecutor' (see Intro., n. 89), 248-303; S/2010/574, *Letter dated 12 November 2010 from the President of the International Criminal Tribunal for Rwanda addressed to the President of the Security Council: Report on the Completion Strategy of the International Criminal Tribunal for Rwanda (as of 1 November 2010)*, 05/11/2010, 8-9.

²⁵ *ICTR Legacy Symposium – 20 Years of Challenging Impunity*, Arusha, 06/11/2014–07/11/2014. Mégret also identifies a similar shift in personnel (and a correlative effect on trial practice) as there was a shift from actors with a background in international law, to those with a back ground in criminal law. Mégret, 'International Criminal Justice as a Juridical Field' (see Internet Materials).

creation of trial committees—with representatives from the trial chambers, prosecution teams and the registry—which were convened to ensure that the trials were on track. Informal use of status conferences, where issues between the defence and the prosecution could be settled without resorting to more time-consuming litigation, were also introduced.²⁶ Similar changes were seen in each of the organs of the Tribunal, and unifying this was a concerted attempt to produce more efficient and streamlined proceedings, and seemingly also to place greater power in the hands of the judges to enable them to control how the proceedings functioned. This also resulted in a shift towards courtroom practices more rooted in civil law, which was also seen in the judges' continued revisions of the RPE.²⁷

However, in addition to the shifts in practice that appeared motivated by the desire to enhance the legal quality of the trials, there was another and more significant driving force behind these changes. This was the way in which the UNSC intervened in the Tribunal to enforce changes in how trials were approached. This will be considered in the following section as I consider the way in which these interventions resulted in the 'politicisation' of the trial process. What is meant here by this is that political considerations, rather than purely legal ones, influenced how trials unfolded *within* the courtroom.

Politicisation

There was a marked shift in the relationship of the ICTR and ICTY with other UN organs (particularly the UNSC) during the Tribunals' first decade. As Chapter One set out, the

²⁶ S/2003/946, *Letter dated 3 October 2003 from the Secretary-General Addressed to the President of the Security Council: Completion Strategy of the International Criminal Tribunal for Rwanda*, 06/10/2003, 15; and S/PV.4999, *4999th Meeting*, 29/06/2004, 12.

²⁷ ICTR President (2015).

Tribunals were initially seen as a new tool of international peace and security, made perhaps particularly attractive as they seemed like a more ‘economic’ response, in terms of both financial and political capital, when compared to other more interventionist strategies (such as military action).²⁸ This good will towards the tribunals—and particularly the ICTR—was, however, relatively short lived, as the trials proved to be very costly, slow and inefficient.²⁹

A series of other reputational issues, along with ingrained interdepartmental wrangling for control over the Tribunal, led a number of UN organs (particularly the UNSC, UNGA and the Fifth Committee—the sub-section of the UN charged with overseeing the finances of UN operations) to intervene and to bring about change in the Tribunal’s practices.³⁰ Consequently, in the late 1990s and early 2000s, numerous reports into the Tribunal’s practices were published, the most substantial of which came as a result of the Fifth Committee’s interventions through the UN’s Office of Internal Oversight Services (OIOS).³¹ These reports focused on how the Tribunal could be better managed, with a view to

²⁸ S/PV.3377, 3377th Meeting, 16/05/1994, 19; and E/1994/SR.8, *Provisional Summary Record of the 8th Meeting*, 14/06/1994, 4; and A/C.5/48/SR.57, *Fifth Committee: Summary Record of the 57th Meeting: Financing of the United Nations Observer Mission Rwanda*, 29/03/1994, 2–3; S/1995/134, *Report of the Secretary-General Pursuant to Paragraph 5 of Security Council Resolution 955 (1994)*, 13/02/1995, 4.

²⁹ Whilst this seemed to peak at the turn of the millennium, the concern expressed by member states over the progress being made by the Tribunal goes back to as early as 1996. A/51/PV.78, 51st Session, 78th Plenary Meeting, 10/12/1996, 18; UNSC, 4429th Meeting, S/PV.4429, 27/11/2001, 7; S/PV.5453, 5453rd Meeting, 07/06/2006, 23; S/PV.5697, 5697th Meeting, 18/06/2007, 22–3 and 28; and S/PV.7192, 7192nd Meeting, 05/06/2014. Byrne, ‘The New Public Prosecutor’, 263–5.

³⁰ Indeed, one interviewee informed me that during these early years the relationship between the Registry and the chambers and OTP was particularly fraught as they each vied for control over the Tribunal. The relationship even deteriorated to the extent that there was a genuine fear amongst members of the chambers that the registrar might actively try to sabotage the progress of the trials so as to be able to accuse the Chambers of being incompetent. Senior Legal Office (2016). See also, Appeals Judge (2016).

³¹ A/51/789, *Financing of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States Between 1 January and 31 December 1994: Report of the Secretary-General on the Activities of the office of internal Oversight Services*, 06/02/1997; and A/C.5/57/L.35, *Financing of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994*, 04/12/2002; A/RES/53/213, *Resolution 53/213*, 10/02/1999; A/C.5/51/SR.39 *Fifth Committee: 51st Session: Summary Record of the 39th Meeting*, 11/12/1996; A/54/634; and A/53/659, *Report of the Advisory Committee on Administrative and Budgetary Questions*, 11/11/1998, 10–1.

economising the Tribunal's practices in terms of both time and resources.³² Indeed, as will be explored below, concern about the economics of justice came to dominate the Tribunal and influenced the ways in which justice was ultimately delivered and, moreover, what justice meant.

These reports' findings were highly critical and made a series of recommendations about how the practices and structure of the institution could be improved.³³ One of the earliest OIOS reports resulted in the re-organisation of the registry, and also demanded the resignation of the registrar and deputy registrar after the investigators found high levels of corruption and incompetence within the registry.³⁴ However, when this failed to resolve the continuing dispute between the Registrar and the President as to who, ultimately, was the head of the Tribunal, a report by the 'Expert Group' for the International Tribunals declared that the president was the effective head of the Tribunal and in charge of all matters relating to the court's legal and political duties, with the registrar solely in charge of the administrative aspects of the court.³⁵

³² A/54/634, 9.

³³ See the report: A/51/789. A/56/853, *Financing of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991: Financing of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994: Comprehensive report on the results of the implementation of the recommendations of the Expert Group to Conduct a Review of the Effective Operation and Functioning of the International Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda*, 04/03/2002, 2 and 6.

³⁴ A/52/582-S/1997/868, *Report of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994*, 13/11/1997, 2–3 and 15–6; and A/53/PV.47, 53rd Session: 47th Plenary Meeting, 28/10/1998, 5–12.

³⁵ A/54/PV.48, 54th Session: 48th Plenary Meeting, 08/11/1999, 15; A/54/634, 60, 74–8; It was suggested that the President would oversee the duties of the registrar, without, however, the registrar being an official subordinate of the President. A/51/7/Add.8, *Financing of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other such*

Many of these interventions were justified and, whilst arguably one of the major reasons the Tribunal struggled in the early years was due to lack of sufficient funding and the difficulty of the task at hand, these did help to tackle serious issues such as corruption and conflicts between the Tribunal's organs.³⁶ It was notable, however, that these reports also made suggestions about how the Tribunal should go about prosecuting the crimes falling within its jurisdiction. For instance, they suggested that the judges needed to exert greater control over the trials to shorten the procedures and to make the trials more efficient.³⁷ The reports also called for an end to 'excessive lawyering' and suggested that the OTP should cut down the scope of the charges being pursued and begin focusing solely on the more senior persons responsible for the violence in Rwanda, leaving lesser criminals to other jurisdictions, and that they should make greater use of plea agreements and judicial notice (the effects of which were discussed in the previous chapter).³⁸ There were also suggestions that specifically called for the Tribunal to change its approach to witness testimony. These included calls for the judges to exert more control over how witnesses were examined, to ensure a reduction in the number of witnesses called, and for greater use to be made of Rule 92 *bis*, which allowed

Violations Committed in the Territory of Neighbouring States Between 1 January and 31 December 1994: Ninth Report of the Advisory Committee on Administrative and Budgetary Questions, 29/05/1997, 15–6. To some extent, it appeared that inner wrangling continued to be a feature of the ICTR even after this. Head of Appeals (2015); and Appeals Judge (2016).

³⁶ Many of my interviewees noted the extent of the challenge of creating a court from scratch in Tanzania and the impact that this had on the trials. Senior Member of ICTR Office of the Prosecutor (2015); Head of Appeals (2015); Anonymous 2 (2016); and ICTR President (2015).

³⁷ A/54/634, 18–38; S/2004/616, *the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies: Report of the Secretary-General*, 23/08/2004, 15; and S/PV.4429, 27/11/2001, 8. Byrne, 'The New Public Prosecutor' (see Intro., n. 88), 265.

³⁸ A/56/853, 2 and 11; and A/54/634, 28–30. Again, we have the prioritising of speed and efficiency over other potential goals that could be pursued by the Tribunal. Pleas, for instance, produce a particularly narrow output, since most of the cases and alleged crimes are discarded in order to get a confession. Whilst securing a verdict (adding again to the Tribunal's *statistics*) it can perhaps be seen as contributing less to some of the other extra-judicial goals, such as producing history or aiding reconciliation. Also of interest here is that the vast majority of the guilty pleas come in after the creation of the completion strategy. S/2015/884, *Letter Dated 17 November 2015 From the President of The International Criminal Tribunal for Rwanda Addressed to The President of The Security Council: Report on The Completion of The Mandate of The International Criminal Tribunal for Rwanda as at 15 November 2015*, 17/11/2015, 15.

written statements to be submitted in substitute of in-court testimony.³⁹ One report produced in 1999 and co-written by Hassan Jallow before he became the ICTR's prosecutor, stated:

Some [witness answers] seem to be evoked by vague, multiple or compound questions and the relative infrequency of objections to them. There appears to be a disposition to tolerate this procedure, *particularly in the case of testimony by victims*, the thought being that allowing them to tell their stories in their own way has a salutary cathartic psychological benefit. In addition, some judges may be *needlessly sensitive* to the potential for criticism if they intervene actively to exercise greater control over the proceedings. (Emphasis added.)⁴⁰

These reports coincided with the period in the late 1990s and early 2000s when the judges' approach to the trials shifted in order to gain greater control over how these proceeded. At this point, as noted above, the judges, with greater energy, began to curb both the number of witnesses and the length of their testimony during trials.⁴¹ Whilst some of the changes, as noted previously, were also motivated by legal concerns, the language that underpinned these decisions demonstrated the significance of the UNSC's pressure.⁴² This focused on the need to economise judicial time, in order to make the trials more judicially efficient, and also to make the trials *financially less costly*.⁴³ One of the justifications for ordering the witness lists to be shortened stated:⁴⁴

It's no point us having witnesses that are not advancing the issues very much. *Great expense* is involved in bringing these witnesses to the tribunal. Our budget has been seriously cut and so the *issue of economy* has to be taken into consideration as well. *We can't just bring witnesses here for the sake of bringing*

³⁹ S/2003/946, 11; and A/56/853, 4 and 10.

⁴⁰ A/54/634, 29.

⁴¹ S/PV.4429, 27/11/2001, 8; and Anonymous 2 (2016).

⁴² ICTR-99-46-0183, 18/9/2000; ICTR-99-46-0488, *Proposed Reduction in the List of Defence Witnesses in the Cyangugu Case*, Case No. ICTR-99-46-T, 30/04/2002; ICTR-99-46, TRA001998/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 05/02/2003, 05/02/2003, 44; and ICTR-99-46, TRA001601/2, [Cyangugu] – Ntagerura et al – Redacted Transcript of 28/03/2002, 28/03/2002, 7.

⁴³ ICTR-99-46, TRA000526/2, [Cyangugu] – Ntagerura et al – Redacted Transcript of 12/03/2002, 12/03/2002, 104–5. Indeed, the extent to which judicial time was prioritised was seen when one of the witnesses was brought to the courtroom without any shoes or socks on in order for the court session to start on time. ICTR-99-46, TRA001915/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 24/03/2003, 24/03/2003, 2.

⁴⁴ It was noted, moreover, that the push towards cutting down witness lists was in tension with the desire of the witnesses to have their moment in court. ICTR President (2015). Arguin also noted that one of the reasons why the OTP choose the witnesses they did (and also did not diversify the pool of witnesses they drew upon as much as they might of) was because of a desire to keep costs low. Head of Appeals (2015).

them. They have to be contributing materially to the issues that have to be considered. (Emphasis added.)⁴⁵

This provides clear evidence of how political influence from outside the Tribunal contributed to determining how defendants were being prosecuted.⁴⁶

This ‘efficiency drive’ accelerated when, in 2002, an increasingly dissatisfied UNSC told the Tribunal that, along with the ICTY, they needed to formulate a ‘completion strategy’ that would ensure that the Tribunals would conclude their work as quickly as possible.⁴⁷ The strategy was finalised in 2003, and this dictated that the prosecution were to finish all investigations by 2004, with trials in the first instance concluded by 2008 and appeals by 2010.⁴⁸ One of the first changes introduced in search of these goals was the creation of separate Prosecutor posts for the ICTR and the ICTY. Hassan Jallow, who, as the above statement suggests, was already intent on making the OTP’s approach more efficient, and

⁴⁵ TRA001601/2, 7.

⁴⁶ The drive to quicken the pace of trials also resulted in changes to the RPE. S/2003/946, 12 and 14. Some of these changes were very substantial and included, for instance, the decision in 1998 to merge both the judgement and sentence into one procedure, eradicating the sentencing hearing. A/53/429, *Report of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994*, 23/09/1998, 4. Other similar rule amendments used in order to speed up the trial process include: reducing the time limits from 60 to 30 days with pre-trial motions; allowing the defence to use external language translations; allowing the confirming judge to sit on the trial; President being allowed to order the creation of directives to better regulate the trial; and, importantly, the power of the judges to impose sanctions for ‘frivolous’ motions. A/54/315–S/1999/943, *Report of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States Between 1 January and 31 December 1994*, 07/09/1999, 5; ICTR–99–46, TRA000207/01, [Cyangugu] – Ntagerura *et al* – Redacted Transcript of 18/09/2000, 18/09/2000, 102; A/58/140–S/2003/707, *Report of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994*, 11/07/2003, 3. This logic was, moreover, utilised by the prosecution in order to argue for the joinder during Cyangugu. ICTR–99–46–0001, *Prosecutor’s Motion for Joinder of the Accused (Ntagerura, ICTR–96–10A–T0, Bagambiki ICTR–97–36–T, Imanishimwe ICTR–97–36–I, and Munyakazi ICTR–97–36–I)*, 02/04/1999, 24.

⁴⁷ A/C.5/57/L.35.

⁴⁸ S/RES/1503, *Resolution 1503*, 28/08/2003, 2.

changing the role of the witnesses in the trials, was appointed as prosecutor at the ICTR.⁴⁹ The prosecution subsequently created a new OTP policy that would streamline their prosecutions along the lines suggested in these reports.⁵⁰ This policy change was central to the shift in trial practice between *Akayesu* and *Gatete* as discussed in Chapter Two, including the very clear reduction of the scope of the *Gatete* indictment over time.⁵¹

There was an additional consequence of this shift in priority, however, which was to increase the court's focus on crimes committed against the Tutsis, and hence reinforce the ethnocentric nature of the Tribunal's account. This was for two reasons. First, this focus on only the most 'serious' charges also meant that it became 'reasonable' to only focus on genocide charges, which helped to justify the OTP's decision not to prosecute the RPF for their ('less serious') crimes against humanity.⁵² Second, driven by a concern with efficiency, this new strategy also focused on episodes of violence that could result in multiple charges against the defendants (for instance both genocide and crimes against humanity).⁵³ As only Tutsi victims could stand as signifiers of all three types of crime contained within the courts statute, this strategy further contributed to an understanding of the Tutsi as *the* victim of the

⁴⁹ A/54/634, 9; and S/RES/1503, 2.

⁵⁰ Senior Member of ICTR Office of the Prosecutor (2015); S/2003/946, 6 and 18; S/PV.4999, 18–9. At this point in the OTP's history the number of estimated new indictees fell from 136 to 26. A/57/PV.36, 57th Session: 36th Plenary Meeting, 28/10/2002, 15.

⁵¹ Senior Investigator (2015); ICTR-00-61, ICTR-00-61-0025, *Gatete – Defence Preliminary Motions, Under Rule 72 of the Rules of Procedure and Evidence*, 12/04/2003, 5; ICTR-00-61, ICTR-00-61-0022, *Gatete – Prosecutor's Response to the Defense Preliminary Motion Challenging Defects in the form of the indictment Pursuant to Rule 72*, 09/05/2003, 5; ICTR-00-61, ICTR-00-61-0029, *Gatete, Decision on Defence Preliminary Motion*, 29/03/2004, 3; ICTR-00-61, ICTR-00-61-0069, *Gatete, Motion: Preliminary Motion*, 22/05/2009, 6; ICTR-00-61, ICTR-00-61-0073, *Gatete – Decision on Defence Motion Concerning Defects in the Amended indictment*, 03/07/2009, 7; ICTR-00-61, ICTR-00-61-0074/1, *Gatete – the Prosecutor's Submission Complying with the Decision on Defence Motion Concerning Defects in the Amended indictment Dated 3 July 2009*, 07/07/2009; ICTR-00-61, ICTR-00-61-0079, *Gatete – Prosecutor's Pre-Trial Brief (Pursuant to Rule 73bis (B) of the Rules of Procedure and Evidence)*, 21/07/2009, 21 and 36; ICTR-00-61, ICTR-00-61-0036/1, *Gatete – Amended indictment, ICTR-00-61*, 10/05/2005; ICTR-00-61-0074/1; and ICTR-00-61, ICTR-00-61-0100, *Gatete, Decision on Defence Motion Raising Defects in the Prosecution Pre-Trial Brief of 19 August 2009*, 02/10/2009. See also the description of *Gatete* in the Appendix.

⁵² Head of Appeals (2015); Senior Member of the ICTR Office of the Prosecutor 3 (2015); and S/RES/1503, 2. See also S/2003/946, 6 and 18.

⁵³ S/PV.4999, 18–19.

genocide. The effects were seen in the *Gatete* example noted above whereby the prosecution's case was focused completely on acts of violence committed against Tutsis.⁵⁴

The efficiency drive had other effects as well. It contributed to a shift away from using trials as vehicles through which histories of the violence in Rwanda were consciously constructed, as appeared to be the case with some earlier trials.⁵⁵ The final case to clearly do this was *Karemera et al* (which began in 2004), where Don Webster, a senior trial attorney for the prosecution, saw that the trial's focus on defendants in key positions within the overall conspiracy offered an opportunity to tell a broad narrative (a sort of mega-history) about the violence in Rwanda as a whole.⁵⁶ This resulted in two major outcomes. The first was, as discussed previously, that the trial saw the appeals chamber take judicial notice of the genocide, which meant it was no longer legally necessary to present a wider picture of the genocide at a national level at subsequent trials. Second, this attempt at a mega-history resulted in an *enormous* amount of disclosure (as this increased what might be considered relevant 'exculpatory' evidence), which produced a cumbersome trial and placed the OTP under considerable strain, at a point where the OTP was trying to improve its trial efficiency.⁵⁷ This meant that the goal of consciously producing history came into conflict with the goal of efficient trials, and *Karemera* marked the last trial to focus on producing 'fluffy history', as a former member of the Tribunal put it.⁵⁸

It is also possible to see that these new metrics of success based on efficiency influenced how the Tribunal projected its achievements to the outside world and the manner in which the

⁵⁴ ICTR-00-61-0079, 21 and 36.

⁵⁵ Head of Appeals (2015); 'Judgement Day', *Washington Post*; Gaynor, 'Uneasy Partners' (see Intro., n. 31), 1259-63; Goldstone, 'Justice as a Tool for Peace-making' (see Intro., n. 4); Akhavan, 'Justice and Reconciliation' (see Chap. One, n. 82), 340-1; and Alvarez, 'Akayesu' (see Intro., n. 12), 36.

⁵⁶ Senior Member of ICTR Office of the Prosecutor (2015).

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*; and Senior Member of ICTR Office of the Prosecutor 2 (2015).

Tribunal reported on their progress to the UN.⁵⁹ As Eltringham also notes, these reports (and increasingly over time) relied heavily on quantitatively driven assessments based on metrics of speed and efficiency, to show what had been achieved.⁶⁰ For example, in the Tribunal's 2010 report to the UNSC the Tribunal mobilised a series of graphs to show that the speed of trials of first instance had risen dramatically.⁶¹ There was, however, very little focus on other ways in which success could be measured, such as by using more qualitatively based assessments of the experiences of trial witnesses or the quality of the written judgements.

Over time, it seemed as though the efficiency and economy of the trials was what came to define the court's approach to 'justice'. A number of actors actively contested and

⁵⁹ A/58/140-S/2003/707, 11/07/2003, 2. This can also be seen in the emphasis that Judge Møse placed on the improvements to trial procedures based on the increased speed of the prosecutions.

Single-accused cases are, of course, much more complicated at the international level than at the national level. But at the ICTR we now have considerable experience in handling them in an efficient way. Recent examples are the Niyitegeka, Gacumbitsi, Ndindabahizi and Muhimana trials, where the prosecution presented its evidence in four weeks, followed by a similar period for the defence after a break. The number of days required to hear all witnesses in single-accused cases has steadily decreased, as mentioned in paragraph 21 of our [completion strategy]. The fastest was the Ndindabahizi trial, where all witnesses, both prosecution and defence witnesses, were heard in 27 trial days. Additional time is then required for the parties to present their written and oral submissions and for the Chamber to write its Judgement. S/PV.4999, 12.

⁶⁰ Eltringham, 'When We Walk Out' (see Intro., n. 94), 550; A/60/229-S/2005/534, *Report of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994*, 15/08/2005, 2; S/2006/951, *Letter dated 30 November 2006 from the President of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994 addressed to the President of the Security Council: Completion strategy of the International Criminal Tribunal for Rwanda*, 08/12/2006, 4; S/2015/884, 5–11. For example,

During the reporting period, two trial judgements were delivered in the Nzabonimana and Nizeyimana cases. Nizeyimana was one of the fastest trials for its size, further showing that efforts to improve efficiency in recent years have had a positive impact, especially in single accused trials. One appeal judgement was delivered in the Gatete case in October 2012, marking the completion as projected of four appeal judgements concerning four persons in 2012.S/PV/6880, 6800th Meeting, 05/12/2012, 8.

⁶¹ S/2010/574, 8–9; and S/2011/317, *Letter dated 12 May 2011 from the President of the International Criminal Tribunal for Rwanda addressed to the President of the Security Council: Report on the Completion Strategy of the International Criminal Tribunal for Rwanda (as of 12 May 2011)*, 18/05/2011, 8. Indeed, the focus on improving the efficiency of the trials continued right up until the end of the Tribunal's existence. In pursuit of this, the Tribunal employed two external consultants in October and November 2008 in order to try to continue to improve efficiency of the prosecutions. S/2008/726, *Letter Dated 21 November 2008 From the President of the International Criminal Tribunal for Rwanda Addressed to the President of the Security Council: Report on the Completion Strategy of the International Criminal Tribunal for Rwanda*, 21/11/2008, 10.

condemned this approach for fear that this was having a negative effect on the trials. Peter Robinson in *Karemera et al*, for example, submitted a motion that called for President Byron (the presiding judge in the case) to be barred from deciding on a motion as he feared that his obligation to the completion strategy and efficiency would influence his decision in the matter at hand to the detriment of the rights of the accused.⁶² Judge Hunt, whilst participating in an interlocutory appeal in *Butare*, argued that the Tribunal's focus on efficiency had overridden all other considerations, *including the rights of the defendant*, which in that instance led him to submitted a dissenting opinion.⁶³ Similarly, at the closing of the Tribunal the New Zealand delegate to the UNSC noted, with regret, that '[a] budget-driven mentality seems to have distorted the conversation about the role and performance of the Tribunals.'⁶⁴ These were, however, very much dissident voices, and by the end of the Tribunal's existence each of the organs seemed committed to the pursuit of lean and efficient justice.

This trajectory continued as the UN created the Residual Mechanism (MICT) to complete the remaining work of the International Criminal Tribunals (ICTs) after they closed down.⁶⁵ Whilst the MICT is beyond the scope of this dissertation, the underlying rationale behind its creation and mandate highlights further the argument developed in this chapter. Throughout the UNSC focused on keeping the costs of the MICT as low as possible and on emphasising the need for efficiency. The centrality of these concepts to the project was such that they also shaped the very *design* of the MICT's new building, which was supposed to capture the

⁶² Defence Counsel (2016).

⁶³ The appeal challenged trial chamber's decision that a trial could continue with a replacement judge without rehearing evidence. Whilst the majority upheld the trial chambers ruling, Judge Hunt, in dissenting, argued that this violated the rights of the accused. *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42, ICTR-98-42-A15bis, *Decision in the Matter of Proceedings under Rule 15bis(D) – Dissenting Opinion of Judge Hunt*, 24/09/2003; and S/PV.7574, 25.

⁶⁴ S/PV.7574, 7574th Meeting, 09/12/2015, 26.

⁶⁵ It was decided that the MICT should be created after it became clear that the ICTs were not going to meet their expected completion strategy closure targets. S/PV.6041, 6041st Meeting, 12/12/2008, 13.

‘lean’ and ‘efficient’, and importantly *temporary*, nature of the MICT.⁶⁶ These changes were also reflected in the MICT’s statute, where the prosecution was no longer permitted to submit indictments against new suspects and was restricted in *who* could be prosecuted (only ‘the most senior leaders suspected of being most responsible for the crimes’).⁶⁷ Moreover, the judges here were given the right to refer cases to a different jurisdiction if they felt it not to be in the interests of the Tribunal to pursue them, *even without the consent of the prosecution*.⁶⁸ This marked an even greater shift in power to the judges.

These changes had an important bearing on the way the trials were conducted, and also, as the example of *Gatete* above demonstrates, significantly influenced the types of stories that were told (increasingly fewer in number, with more specific and focused content) and who was going to tell them (ideally by as few witnesses as possible). Combined with the legalisation of the process, discussed previously, there were again signs that the witnesses and their stories, along with the Tribunal’s extra-judicial goals, were increasingly neglected as the legal agents of the court pushed for more efficient and economic trials. This also indicates that, over the course of the Tribunal’s existence, changes to its strategic function resulted in shifts in its very conception of what constituted ‘justice’ and, indeed, who and what the Tribunal was for. The final section of this chapter will continue to explore this shift in the strategic function of the Tribunal.

An Evolving Strategic Function

⁶⁶ A/69/734, *Financing of the International Residual Mechanism for Criminal Tribunals: Construction of A New Facility for the International Residual Mechanism for Criminal Tribunals, Arusha Branch*, 19/01/2015, 4.

⁶⁷ S/RES/1966, *Resolution 1966*, 22/12/2010, 6.

⁶⁸ S/RES/1966, 8.

So far, this dissertation has focused on how the competing (and evolving) priorities of different actors influenced how the trials unfolded within the courtroom. I have shown that whilst on the surface the witnesses appeared to play a central role in the proceedings, underneath their interests were rarely the driving force behind how the trials were approached, and that this only became less so with time. This final section explores this further by assessing a number of other measures pursued by the ICTR that impacted on the witnesses, and Rwandan society more generally, in order to further determine *who* the Tribunal's energies were directed at assisting. In doing so, this further explores the argument developed here that, over time the Tribunal's strategic function evolved to become more narrowly focused on solely administering the law. I will draw on three examples of the Tribunal's approach here: developing judicial capacity in Rwanda; witnesses; and its legacy.

One of the Tribunal's claimed successes in relation to helping Rwanda overcome the genocide was its contribution to the rebuilding of the Rwandan judicial system. It was, however, not until the 2003 completion strategy took effect that the Tribunal began to pay attention to this task. At this point it became apparent that if the Tribunal were to finish all trials before 2010 they would have to transfer some of the confirmed indictments to other jurisdictions, which resulted in the decision to introduce Rule 11 *bis* to the RPE, which made this possible.⁶⁹ The remaining problem, however, was that only the Rwandan government showed any interest in receiving these cases, and they did not meet the internationally set trial standards necessary to do so under Rule 11 *bis*. Therefore, the Tribunal embarked on a policy to improve trial conditions and punishment regimes in Rwanda, which led to a number of

⁶⁹ S/2008/726, 13–14. Whilst this rule change was considered as early as 1999 in one of the expert reports commissioned in order to improve the Tribunal's 'efficiency', it was not enacted until June 2002. A/54/634; OTP, *Changes to the Rules of Procedure and Evidence*, 42.

changes to Rwanda's judicial system, including the eradication of the death sentence.⁷⁰ In 2011 a trial chamber finally agreed to transfer the Uwikingi indictment to the Rwandan authorities.⁷¹

A closer look at this process, however, shows that the attempts at reform were directed at the specific cases transferred by the ICTR, rather than an *overall* reform of Rwanda's judicial system.⁷² As such, it was sufficient for Rule 11 *bis* transfers that punishments such as solitary confinement were outlawed under a Rwandan statute governing transferred cases, despite still being used in other domestic trials.⁷³ Indeed, the ICTR was transferring case dockets to Rwanda, which facilitated prosecutions there, *long before* the Uwikingi decision.⁷⁴ As such, it appears that this policy was only pursued to the extent that it enabled the Tribunal to meet the goals of the completion strategy, rather than out of a concern for the state of the Rwandan judiciary.

A similar dynamic was also seen with the Tribunal's treatment of Rwandan witnesses. This went beyond what has so far been discussed—where in court the witnesses were increasingly pushed to the periphery of the Tribunal's concerns—and extended to how the court imagined

⁷⁰ A/60/229-S/2005/534, 14; S/2006/951, 10; S/PV.5697, 9. It, moreover, only really seemed to receive sufficient attention from 2006 onwards. S/PV.6041, 28.

⁷¹ See *Prosecutor v. Jean Uwikingi*, Case No. ICTR-01-75, ICTR-01-75-AR11bis, *Uwikingi – Decision on Uwikingi's Appeal Against the Referral of His Case to Rwanda and Related Motions*, 16/12/2011.

⁷² S/PV.6041, 27–8; TRA001915/1, 7; ICTR-99-46, TRA001916/1, [*Cyangugu*] – *Ntagerura et al – Redacted Transcript of 25/03/2003*, 25/03/2003, 2–3. Some, moreover, doubt whether this was successfully at all, viewing the decision to transfer under Rule 11 *bis* as a political necessity. Iain Edwards (discussant), *ICTR Legacy Symposium*. I am not claiming that there were not individuals within the Tribunal that did have this concern; I have no doubt that many went beyond what was required of them and genuinely were focused on improving the conditions in Rwanda. However, what this section is exploring is what the Tribunal as a whole was trying to achieve and what its strategic function was.

⁷³ Erik Møse, 'The ICTR's Completion Strategy: Challenges and Possible Solutions', *Journal of International Criminal Justice* 6:4 (2008), 5 and 7; A/68/PV.33, 68th Session: 33rd Plenary Meeting, 14/10/2013, 3–4; and Iain Edwards, 07/11/2014. See for instance ICTR-00-61, ICTR-00-61-0068/1, *Gatete – Decision on Prosecutor's Request for Referral to the Republic of Rwanda*, 17/11/2008.

⁷⁴ Møse, 'ICTR's Completion Strategy', 5 and 7; and A/68/PV.33, 3–4.

their obligation to the witnesses and to the apparent dissonance between the Tribunal's and the witnesses' priorities more generally. During *Gatete*, for instance, a witness was denied the opportunity of presenting a letter concerning the state of their detention in Rwanda to the registry, because this was not seen as a matter that fell within the Tribunal's 'competence'.⁷⁵ In 1998 the OIOS even *blocked* the registrar from further exploring possible ways that the Tribunal could help victims through the Voluntary Trust Fund (VTF) (a separate budget to the Tribunal's main budget, which was financed by voluntary state contributions),⁷⁶ and in 2000 the judges actively decided *not* to expand the Tribunal's mandate to include victim compensation.⁷⁷ The secondary importance of the witnesses' needs (without whom there would have been *no tribunal*) was also demonstrated through the witnesses' post-testimony care. Not only did the Tribunal fail to follow-up with witnesses about their experiences of testifying at the Tribunal (so as to be able to ensure that the witnesses needs were met to the greatest extent possible), but post-testimony medical and psychological care were only introduced after a number of years (the ICTR's Kigali Health Clinic was opened in 2004) as an attempt to quell criticism being directed at the Tribunal, from the Rwandan government in particular, for the fact that defendants were living in better conditions, with better care, than the victims⁷⁸—an issue that was never really resolved.⁷⁹ That this was not a central aspect of

⁷⁵ TRA001916/1, 2–3.

⁷⁶ The Tribunal was actively prohibited from using the main budget to fund outreach programmes. Senior Member of ICTR Office of the Prosecutor (2015).

⁷⁷ A/52/784, *Financing of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994: Report of the Secretary-General on the activities of the office of internal Oversight Services*, 06/02/1998, 14; S/2000/11989, *Letter from President Pillay to the President of the United Nations Security Council*, 15/12/2000, 1 and 5; and S/PV.4229, 4229th Meeting, 21/11/2000, 6; and Anonymous 2 (2016). A former senior figure within the OTP also noted that in this respect the Tribunal was a 'victim' of the statute they were given. Anonymous 2 (2016).

⁷⁸ Victim and Witness Support (2015); Peskin, *International Justice* (see Intro., n. 75), 199–207; A/55/512, *Financing the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994: Report by the Secretary General*, 23/10/2000, 3; A/51/789, 18; /PV.6678, 6678th Meeting, 07/12/2011, 7; and A/54/315–S/1999/943, *Report of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious*

the Tribunal's purpose was seen by the fact that this had to be paid for out of the VTF, rather than the Tribunal's main budget, which additionally meant that these schemes were more vulnerable as they relied on the 'generosity' of other states.⁸⁰ The dependence on this meant that in 2011, due to a lack of funds, the health clinic faced closure.⁸¹

Even worse, however, was the *danger* that testifying brought for some witnesses, as a number of ICTR witnesses were either killed or intimidated as a result of being linked to the Tribunal.⁸² During *Akayesu* alone 20 potential witnesses linked to the case were killed due to their association with the Tribunal.⁸³ When Witness J from *Akayesu* returned to Taba, '[S]he found that people had left stones and pepper under her door with a note, "You are also a killer, because you accuse others" [...] and was subsequently] chased out of her rented house.'⁸⁴ Most worrying of all is that the Tribunal claimed (and continues to claim) that *no* witness was ever killed due to being associated with the Tribunal, something that was in fact

Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States Between 1 January and 31 December 1994, 07/09/1999.

⁷⁹ Elizabeth Neuffer, *The Key to My Neighbour's House: Seeking Justice in Bosnia and Rwanda* (New York: Picador, 2001), 379. In some instances, for example, perpetrators of rape were being treated for Aids and HIV whilst those that had been raped were neglected. S/PV.7192, 14.

⁸⁰ S/PV.6678, 6678th Meeting, 07/12/2011, 7.

⁸¹ *Ibid.*

⁸² A/54/PV.48, 63. See also Nicola Palmer *et al.*, 'Testifying to Genocide: Victim and Witness Protection in Rwanda' (see Internet Material list). Some of these murders were also linked to the defence counsel's employing of former genocidaires. Redress, *Survivors and Post-Genocide Justice in Rwanda*, 59–63.

⁸³ Andrew Trotter, 'Witness Intimidation in International Trials: Balancing the Need for Protection against the Rights of the Accused', *George Washington International Law Review* 44 (2012), 133; and Immigration and Refugee Board of Canada, 'Rwanda' (see Internet Material list).

⁸⁴ E/CN.4/1998/54/Add.1, *Further Promotion and Encouragement of Human Rights and Fundamental Freedoms, including the Question of the Programme and Methods of Work of the Commission Alternative Approaches and Ways and Means within the United Nations System for Improving the Effective Enjoyment of Human Rights and Fundamental Freedoms Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences, Ms. Radhika Coomaraswamy Addendum Report of the Mission to Rwanda on the Issues of Violence Against Women in Situations of Armed Conflict*, 04/02/1998, 9.

celebrated in the speech delivered at the ICTR’s legacy conference dinner 2014.⁸⁵ Tellingly, as Richard Goldstone—Prosecutor at the time of *Akayesu*—noted:

During my time as Chief Prosecutor of the [ICTR and ICTY], I used [to] tell people in my office that the first dead witness will likely be the last witness. When people fear for their lives or safety, you cannot expect them to come forward willingly and give evidence.⁸⁶

It seemed that denying what was otherwise common knowledge was required—*despite its potential impact on the witnesses*—so that the institution could survive.

The Tribunal even seemingly struggled with some of the more basic protective measures offered to witnesses, such as the redaction of transcripts, which were intended to conceal the identity of the witnesses. These were both erratic and often offered limited protection, as in many cases it was possible, without much effort, to work out the identities of the witnesses and even what was concealed beneath some of the redacted phrases.⁸⁷ These findings support the argument that the process was primarily focused on ensuring that the institution’s needs of maintaining a sufficient judicial output were met, as opposed to being, first and foremost, oriented around the needs of the witnesses. Indeed, these measures carried with them a level of superficiality, underpinned by a need to *show* that they were doing something to help.

This approach was also reflected in the Tribunal’s other ‘outreach’ and ‘legacy’ policies. The terms ‘outreach’ and ‘legacy’ were only really introduced into the Tribunal’s vernacular

⁸⁵ Appeals Judge (2016).

⁸⁶ Human Rights Brief, ‘Moving Forward’ (see Chap. Two, n. 76), 32.

⁸⁷ ICTR–99–46, TRA000131/1, [Cyangugu] – *Ntagerura et al* – Redacted Transcript of 21/11/2000, 21/11/2000, 82 and 88; ICTR–99–46, TRA001909/1, [Cyangugu] – *Ntagerura et al* – Redacted Transcript of 24/02/2003, 24/02/2003, 37; and ICTR–99–46, TRA001921/1, [Cyangugu] – *Ntagerura et al* – Redacted Transcript of 02/04/2003, 02/04/2003, 30.

around the turn of the millennium, as criticism mounted, in part, over the Tribunal's lack of relevance for Rwandans, and it was not until 1999 that an outreach department was created.⁸⁸ This marked the start of various outreach programmes, including the establishment of information centres in Rwanda to inform the population about the Tribunal's work.⁸⁹ Other similar educational policies followed, such as internships at the Tribunal for Rwandan students studying law and the production of radio broadcasts in Kinyarwanda about the activities of the Tribunal.⁹⁰ Even these, however, did not appear to be a central concern for the Tribunal, but were mostly attempts to quell criticism about the Tribunal's lack of impact.⁹¹ These were, moreover, directed at 'informing' rather than 'engaging' the Rwandan population and were also financed by the VTF, further illustrating the peripheral nature of their objectives.⁹² Over time, however, the focus moved ever further from the 'local', as the legacy and outreach work became more about ideas of 'best practice' and the Tribunal's *institutional memory* than anything else.⁹³

This was highlighted most clearly by the focus of the Tribunal's 2014 'Legacy Conference'.⁹⁴ During the conference most attention was given to the way in which the Tribunal had:

⁸⁸ A/52/784, 14–15; A/55/512, 49; S/PV.4229, 7–8; S/PV.4429, 27/11/2001, 2; A/54/315–S/1999/943, 23; and A/54/PV.48, 8, 11 and 17.

⁸⁹ A/56/853, 12.

⁹⁰ S/2004/601, 15; and A/60/229–S/2005/534, 1 and 3. Perhaps particularly problematic was the Tribunal's participation in genocide awareness raising in the 'solidarity camps', where people suspected of harbouring 'genocide ideology' were sent for 're-education'. S/2013/310, *Letter dated 23 May 2013 from the President of the International Criminal Tribunal for Rwanda addressed to the President of the Security Council: Report on the Completion Strategy of the International Criminal Tribunal for Rwanda (as at 10 May 2013)*, 23/05/2013, 14.

⁹¹ Indeed, the outreach programmes again seemed mainly focused on making Rwandans—and only in very small numbers—aware of the Tribunal's work. These encounters appeared very much based on the Tribunal's terms rather than as an engagement that took Rwanda's needs and wants into full consideration.

⁹² A/56/853, 12.

⁹³ Senior Member of ICTR Office of the Prosecutor (2015).

⁹⁴ S/2006/951, 27; and S/PV/6880, 12. The President of the ICTR noted:

Lastly, as the sun sets on the Tribunal, I would like to raise the essential issue of the legacy that the Tribunals will leave for the future of international law. While some excellent projects have been carried out to preserve our work in the consciousness of the International community, it is our responsibility to collect and share the most important aspects of the work

produced increasingly more economic trials over the course of its existence; made a significant contribution to the international community by developing international legal jurisprudence and procedural best practice guidelines that could assist other jurisdictions to prosecute these crimes; and, importantly, demonstrated that international criminal justice *could work*.⁹⁵ With the exception of the Tribunal's efforts to rebuild Rwanda's judicial capacity and rendering judicial notice, discussed previously, Rwanda and Rwandans were significantly absent from the conference's discussions, as was any notion that the Tribunal had managed to construct an accurate history about the violence in Rwanda or assist with reconciliation: goals associated with the Tribunal in its early years.

Each of these examples, and particularly the legacy conference, demonstrates just how far the Tribunal had moved from the initial hopes and aspirations of the Tribunal as discussed in Chapter One, which saw it as a site of historical exploration, reconciliation and post-conflict state-building.⁹⁶ Indeed, as the above demonstrated, over time the Tribunal's strategic function appeared to shift away from a focus on its extra-judicial contributions to Rwanda and towards a far more legalistic understanding of its purpose, which was also oriented far more towards the 'international' than the 'local'. This is, however, not to say that no one within the Tribunal ever actively pursued these extra-judicial goals after this change was initiated. Examples of those that did can be seen with Don Webster's pursuit of a mega-

of the Tribunal before it closes its doors forever. If resources are not allocated to preserve our legacy, we are in danger of losing the lessons learned by an institution that has helped to shape International law. As our last staff members leave, we lose our collective experience and memory. If that memory is not captured now, it will be very difficult to retrieve in the future. In December, we will be presenting a more comprehensive plan for legacy projects. We hope you will support them. A/66/PV.58, 3

⁹⁵ S/PV.4999, 142; S/2004/616, 14; A/57/PV.36, 16; S/PV.5697, 10–12; A/64/PV.16, 64th Session: 16th Plenary Meeting, 08/10/2009, 2; John Hocking, 'MICT Role in Legacy of the ICTR', *ICTR Legacy Symposium*; and A/57/PV.36, 16. What was notable here, moreover, was that the conference was almost structured to function as a defence against the main attacks normally levelled at the Tribunal, to do with the high costs, and slow pace, of the trials and it's relatively the low conviction rate.

⁹⁶ Goldstone, 'Justice as a Tool for Peace-making' (see Intro., n. 4).

history in *Karemera* and James Arguin's Genocide Story Project. However, as this section has demonstrated, I would argue that these very much ran against the grain of the Tribunal's strategic function, marking an exception, not a rule.

Conclusion

This chapter has explained why it was that the legal actors at the Tribunal, primarily the prosecution and judges, shifted in their approach to the trials over the lifespan of the Tribunal, as they moved from treating the trials as potential vehicles for extra-judicial goals (such as writing histories) towards a narrow focus on the legal output of the trial.⁹⁷ This was the result of both legal actors within the courtroom working to gain greater control over the trials so that they more closely resembled 'normal' criminal trials and, more importantly, because of the interests of political actors, primarily from the UNSC, outside the courtroom. Combined, these led to an approach to the trials that seemed to have little concern other than producing as many judgements as quickly as possible. This additionally adds a third analytic category to the already established 'conditions' and 'processes' of truth: the 'politics of truth', which, by highlighting the impact of political interventions from 'outside' of the courtroom, helps to both establish why particular accounts of violence were created as they were, but also how the whole strategic function of the apparatus shifted overtime.

With time, then, the trials increasingly came to reflect Agamben's idea about the law and its relationship to justice:

⁹⁷ See David Kaye, 'Archiving Justice: Conceptualising the Archives of the United Nations International Criminal Tribunal for the Former Yugoslavia', *Archival Science* 14:3–4 (2014), 383–4.

As jurists well know, law is not directed toward the establishment of justice. Nor is it directed toward the verification of truth. Law is solely directed toward judgement, independent of truth and justice.⁹⁸

This approach to the trials was also mirrored in the way, as the final section demonstrated, that the Tribunal approached its obligations more generally to both the witnesses and Rwandan society as a whole. What this indicated is that it seemed increasingly that those that the Tribunal had been created to help were pushed to the periphery as each organ of the Tribunal began pursuing trials in a manner that reflected its *institutional* and *political* needs. It was only when the needs of the witnesses or different sections of Rwandan society *aligned* with these that the Tribunal could be seen to serve the witnesses and Rwandan society too, producing what might be considered *moments of justice*. As such, this is most certainly not to argue that there was *no* positive effect of these trials for those affected by the violence (although more research is needed into how the Tribunal effected this community, and how different sections of that community might have responded differently – i.e. those normally considered ‘perpetrators’ and ‘victims’), nor that there were not individuals at the Tribunal that attempted to go beyond the strategic function of the court to do what they could to assist Rwandan society overcome the genocide. However, what this does suggest is that when the interests of the legal and political actors clashed with those of the witnesses or different sections of Rwandan society more generally, or when changes in practice or the goals occurred, this was not because the process had suddenly become ‘victim’ or ‘witness’ centred, but because these changes enabled other goals (political or legal) to be pursued. To those that might argue ‘so what’, this has also shown that the failure to place those that suffered at the heart of the process has had *negative* consequences for that constituency.

⁹⁸ Agamben, *Remnants of Auschwitz* (see Intro., n. 105), 18.

This also brings us full circle to the start of the dissertation and the question of whose archive. For it was this logic that ultimately led the UNSC to uphold its claim to have the right to decide on the location and function of the archive. This led to the decision that the archive contained records that were of a legal and institutional value, and as such that the archive should be housed in Arusha with the MICT in order to support its ongoing work, and not transferred to Rwanda.⁹⁹ It is also telling that the archive really only became considered a significant aspect of the Tribunal's legacy at the moment when the completion strategy was introduced.¹⁰⁰ The institutional understanding of the legacy of the archive, then, reached consciousness at the moment when the Tribunal's concern became about institutional survival and judicial output. It was, as such, perhaps at this moment that the fate of the archive was sealed.

The trajectory set out in this chapter has, tellingly, continued at the ICC, *despite* the statute being specifically designed to integrate the needs of the victims and those directly affected by the violence.¹⁰¹ Pena's and Carayon's work on the role that victims play in ICC trials shows that, whilst a structure now exists for victims to stake a greater claim in the production of the court's accounts, they still effectively remain side-lined. This is in part because of the difficulties that victims face in accessing the court, but importantly also because of how the judicial agents continue to control *how* the victims engage with the court process. It is significant that it is still the Prosecutor who decides which defendants to prosecute and for which crimes, and the judges determine who can be considered a 'victim'. Indeed, in almost

⁹⁹ Interestingly, one former archivist noted that another reason they suspected that the UN had been reluctant to hand over the archive to the RPF was because they feared that the RPF might tamper with this and change the historical record to even further reflect its interest. Interview with former ICTR archivist, (Arusha, Tanzania: June 2015).

¹⁰⁰ Member of ICTR Archives Unit (2015).

¹⁰¹ Rosemary Byrne has also similarly argued that the ICC regime is based on ideas of 'efficiency'. Byrne, 'The New Public International Lawyer', 245.

every instance the prosecution has rejected victim parties' requests to amend an indictment or to add additional evidence into the trial.¹⁰² There appears to be a continuation of the clash that occurs between the prosecution's strategy of efficient, focused, trials and the possibility of the court addressing the needs of the victims. In *Lubanga* for instance, the prosecution focused solely on the issue of child soldiers, despite requests from victim parties to introduce evidence of sexual violence and despite evidence of these crimes being inadvertently adduced during the trial.¹⁰³ Moreover, Garbett's work shows how, despite victim parties being given a greater scope to discuss what she describes as deeper and more personal truths during the trials at the ICC, these accounts form no part of the final judgement and are therefore silenced—a finding mirrored here.¹⁰⁴ Combined, this suggests that there is a greater need to think about the mobilisation of these courts under the pretext that they assist, and work in the interests of, those that suffered directly as a result of the violence.

¹⁰² Marianna Pena and Gaelle Carayon, 'Is the ICC Making the Most of Victim Participation?', *The Journal of Transitional Justice* 7 (2013), 530.

¹⁰³ *Ibid.*, 526 and 529–30.

¹⁰⁴ Garbett, 'The Truth and the Trial', 205–6.

Conclusion

This dissertation set out to answer the question, whose archive? Throughout the dissertation I drew on the archive as both a theoretical framework, drawn from Foucault's work, and also a site of empirical investigation. Utilising Foucault's archaeological methodology, the thesis determined what was within the archive and why the archive's records existed as they did, in order to answer the question of *whose* archive? This conclusion will address each of these stages in turn. First, the ideas of the 'conditions', 'processes' and 'politics' of truth identified throughout the empirical chapters explain why the content of the archive is as it is. Second, I will consider what this meant for which of the Tribunal's stakeholders' interests were reflected in the way in which the archive was constructed and put to use. As I have argued throughout, the main finding of this dissertation is that whilst potentially serving multiple constituencies at once, the needs of those who suffered as a result of the genocide were either consistently subsumed by the interests of the other stakeholders (and more so over time) or were simply ignored, and that this is reflected in both the form and content of the archive and how it was constructed. Finally, looking to the future, I will ask what these findings might mean for international criminal justice.

Conditions, Processes and Politics of Truth

As was argued in the introduction, not just any statement could be made within the ICTR's courtrooms and, as with any archive, not just any record could be deposited within its archive. Rather, following Foucault's archaeological methodology, a set of rules existed

which limited *a priori* what could be recorded. As such, one of the principal tasks of this dissertation was to show what rules determined what could and could not be said during the ICTR's trials and, hence, find a place within the archive. Thus, the testimony of the witnesses (as the main source of evidence within each trial) became of central importance as I considered the rules that determined how and why it was that witnesses testified as they did. As became apparent over the course of the dissertation, three key concepts, namely the conditions, processes and politics of truths, explain this, and when taken together these offer a holistic account of why the archive is as it is.¹

First, as was argued particularly in Chapter Two, witness testimony, like all records submitted as evidence during the trials, had to relate to the crimes that the accused had allegedly committed; crimes were limited by the statute and, therefore, temporally, geographically and substantively restricted. I also described the importance of the interplay between the context in which the law functioned and the records produced. For instance, the jurisdiction of the Tribunal was expanded to allow it to address the violence that occurred as a result of the refugee crisis and so as to capture the planning of the genocide, and this had a significant bearing on which records were produced.

However, these conditions were not limited to the statute of the court, nor to the particular interpretations of different laws, but were evidenced in the court's particular understandings of how different actors could act within the accounts constructed, which also fundamentally altered how the violence was to be understood. There was on the one hand the conscious, intelligent and intentional perpetrator who strove towards a particular goal. This resulted in

¹ I would go further and argue that this analytical framework could be applied to *any* site that produces accounts about the past as one of its core functions in order to explain why these existed as they did.

the production of causal and linear narratives of orderly and organised violence, where the defendant could be held responsible for creating—but *never functioning within*—chaos. This was, in part, due to the statute's stipulation that only individuals could be prosecuted, but it also ran deeper to the underlying needs of criminal law, where an accused's ability to think and *choose* made it possible, and just, to hold them to account.

Against this figure of the purposeful guilty perpetrator lay the helpless victim who was acted upon by perpetrators and was considered a purely 'innocent' (but also passive) figure throughout the violence. However, through the emphasis on the inability of 'ordinary' perpetrators to think and therefore act within the trials' accounts, these actors also became passive as others directed and forced them to behave in particular ways. This, along with the influence of the legal provisions of the court, discussed below, additionally had the paradoxical effect of rendering the whole of the Hutu population incapable of resisting participating in the violence, therefore becoming *always already* perpetrators of the violence, but also—within this particular ontology of victimhood—victims as they had no control over their destiny.

I further argued the victims and perpetrators were co-constituted—to be a 'victim that mattered', you had to be attacked by a 'perpetrator that mattered'—and that, importantly, what crime was committed was determined by the perpetrator's perspective of the violence, *not* the victim's. Finally, in this respect, I also established that whether a witness was conceived as a victim or perpetrator would determine how their evidence was treated within the court, and how much scrutiny it was put under.

The third type of agent, more hidden than the victim or perpetrator, was that of the bystander. As was argued in Chapter Two, this actor was predominantly limited to international agents who could observe the violence from an impartial perspective because it was perceived that they were not entangled within its occurrence.

As the allocation of international actors to the position of bystander suggests, these narratives were more than declarations of how these different actors would act, but it was also, and crucially, about how they could be identified. Victims and perpetrators as subject positions within the Tribunal's account became both ethnocentric and also gendered in nature as the various discourses working within the apparatus influenced each other's existence. The centrality of the court's ethnocentric understanding of the violence was a consequence of the provisions of the Genocide Convention (which precluded finding that political groups could be victims of genocide), a shift in the prosecution's priorities that resulted from the completion strategy (discussed below), and the interventions of the RPF, which meant, as aforementioned, that the Tribunal produced a narrative whereby all Hutus were *always already* perpetrators of violence, and against this all Tutsis were *always already* victims. These identities were also gendered as, for the main, it was men that were seen as the perpetrators, and women—along with other groups interpreted as being 'weak' and without agency, such as the elderly and children—that were seen as the victims. Importantly, these conditions cut across each of the legal actors of the courtroom and determined what particular accounts were produced by the prosecution, defence, and judges.

As, however, the discussion of the 'processes of truth' in Chapters Three to Five showed, the witnesses were not completely passive within this process, as is the current consensus within

transitional justice studies.² Rather, witnesses, in a number of important ways, had a significant impact on the archive: the witnesses contested and reshaped how the court understood the violence and also how it approached the evidence that was led. Important in this respect was Witness J's and Witness H's unplanned testimony that they had witnessed or had been raped themselves during *Akayesu*, which led the prosecution to amend their indictment to include allegations of sexual violence and ultimately resulted in the first legal finding that recognised that rape could constitute an act of genocide. This testimony was also partly responsible for the creation of the sexual violence investigation team, which meant that (theoretically at least) sexual violence charges were to be better integrated within the OTP's case strategy. This (although not unproblematically) challenged the apparatus' previous exclusion of women as subjects of no specific concern for international criminal justice. Also of significance here was the finding that witnesses managed to retain a degree of control as to the *meaning* of the violence documented within the records. Consequently, these records offer a far richer account of the violence than is often noted, as they captured the individual and local specificity of the trauma, often breached the temporal and geographical restrictions placed upon the narratives, and even blurred the binary of the victim/perpetrator.

The importance of the witness, and the processes of truth, were also seen in the manner that the Tribunal was forced to make allowances for the witnesses' testimony by considering (even if superficially) the cultural specificity of Rwanda, the fluidity of memory, and the impact of trauma (including the act of witnessing), and finally the way in which the agreement of 'insider' witnesses to cooperate with the Tribunal in the early 2000s altered not only who could be prosecuted, but also from which vantage point the accounts of violence would be told. As this shows, the complex interplay between the different actors of the

² McEvoy and Kirsten McConnachie, 'Victims and Transitional Justice' (see Chap. Two, n., 1).

courtroom, and also the different stages and processes that the trials went through, needs to be considered when understanding why the archive exists as it does and, as will be discussed, *whose* archive.

The dissertation has also shown, as captured in the concept of the ‘politics of truth’, that neither the Tribunal nor the archive existed as a hermetically sealed space, but that these were, rather, highly politicised sites. First, it is important to consider the manner in which the Tribunal participated in the reproduction of certain politically charged discourses. This included the reproduction of ethnocentric narratives, which excluded the voices of Hutu victims, and of gendered and patriarchal discourses that treated violence against women as being of secondary importance. The politics of the archive was similarly evident in the way in which the jurisprudence on consent, superior responsibility and JCE developed over time. This both reflected some of the dubious politics that the Tribunal became embroiled in, and the apparatus’ lack of concern for the needs of those most likely to need law’s protection.

As the *absence* of records relating to sexual violence and Hutu victims demonstrates, the Tribunal’s records remain (as with all archives) incomplete. As I have argued throughout it is important to read these absences for what they can tell us about the broader apparatus that the archive is part of. This is true of other absent records, and even those that are seemingly more benign, including the case files for the defence, and the prosecution’s and chamber’s archives, all of which are inaccessible to the public due to their exclusion from the Tribunal’s central archive in the registry. Even some records that are present are only partially so, whether or not this is because of the incomplete case files kept by the registry (discussed in Chapter Two), or because transcripts are partially concealed due to redactions, and in camera

hearings. These too give us insight into the apparatus that archive sits within, and the politics of the surrounding landscape.

The lack of the defence files, for instance, points to the absence of the defence as an official organ of the Tribunal (which perhaps also contributed to some of the poor defence practice at the Tribunal and the decentring of the defendant from the trials, as discussed in Chapter Four). The *paucity* of the redactions, discussed in Chapter Six, shines a light through the façade of the Tribunal's concern for the witnesses, and the Chamber's and Prosecution's reluctance to hand over their documents to the registry reflects the continuation of competition for control of the Tribunal. The absences in the case files *that should be there* is particularly telling. For these, as discussed in Chapter Two, reflect a failure to initially realise the importance of the archive beyond its legal value. This both captures the reactive nature of the Tribunal during its early years, as at points it struggled to think strategically, and, as Chapter One argued, an uncertainty and lack of clarity about the possible value of the Tribunal. This almost chaotic beginning (perhaps unsurprising given the nature of the task at hand) is further demonstrated by the fact that whilst little thought was being put into maintaining the archive for the future, the prosecution were producing expansive and rich records of violence directed at capturing a broad account of the genocide.

An additional manner in which the archive became politicised was seen in the way that the shifting political climate outside of the Tribunal determined how the Tribunal operated. For instance, as discussed in Chapter Six, the implementation of the completion strategy at the Tribunal (as directed by the UNSC), along with changes in the way that the legal actors approached the trials, meant that the Tribunal's strategic function shifted as it became

increasingly concerned with producing efficient and economic trials. This meant that the witnesses and their needs, along with the Tribunal's extra-judicial goals, were steadily pushed to the periphery of the Tribunal's concern. This shift in the way that trials were pursued had the effect of altering both what records were contained in the archive (fewer and thinner) and how these were to be produced (relying on fewer witnesses). This consequently can be seen to have resulted in the production of even greater absences in the archives account of violence. Here too, then, absences within the archive offer an important insight into the practices and politics of the Tribunal.

To further elaborate on why this shift occurred, I will return to the idea of international criminal justice as a field, as set out in the introduction. To recap: Dixon and Tenove, drawing on Bourdieu, argue that international criminal justice is made up of three overlapping global fields: diplomacy, criminal justice and human rights advocacy.³ Each of these groups of agents rely on different forms of authority,⁴ which are replicated in both their own field and within international criminal justice: delegated, legal, moral and expert.⁵ Diplomatic agents rely largely on delegated authority; legal agents draw principally on legal and moral authority; human rights agents rely on moral authority; and all agents are able to draw on expert authority. Agents seek both to acquire authority and to alter the value attributed to each of these forms of authority within the field, which subsequently alters their position within the hierarchy that exists amongst these agents.⁶ Importantly, shifts in the

³ Dixon and Tenove, 'International Criminal Justice' (see Intro., n. 43), 1–2 and 20.

⁴ This in Bourdieusian terms is akin to capital.

⁵ *Ibid.*, 11–2.

⁶ *Ibid.*, 13–4; and Bourdieu, 'The Force of Law' (see Intro., n. 122), 808.

attributed value of each of these authorities, as discussed below, alters the rules that govern how the field functions.⁷

Over the course of the Tribunal's existence there was a re-valuation of the different types of authority within the field.⁸ In the early years of the Tribunal, moral authority appeared to have the greatest value. This was due in part to the Tribunal's ineffectiveness as a legal institution (limiting access to legal or expert authority), but also due to the rise of human rights and transitional justice discourses, both of which were victim-centred. These factors, when combined with the Tribunal's dependence on victims as witnesses and the resulting idea that it had an obligation to construct a history for (and by) those that had suffered, produced a set of rules whereby authority was acquired in part by allowing witnesses a greater influence over proceedings and also by pursuing a broader mandate.

The effects of this were best seen with the (legally dubious) decision to allow the prosecution to amend the *Akayesu* indictment after the testimonies of Witness H and Witness J, despite the fact that the prosecution's case had all but ended at this point. Perhaps not coincidentally, the new indictment was also pushed for by a human rights organisation, which submitted an *amicus curie* calling for the Tribunal to address sexual violence crimes, and as a result Judge Pillay's presence on the bench, who was particularly attentive to this issue. Similarly, as discussed in Chapter Six, Danner and Martinez have suggested that the 'intrusion' of human

⁷ Dixon and Tenove, 'International Criminal Justice', 4.

⁸ 'However, because multiple forms of authority exist in International criminal justice, actors struggle over which authority will dominate in the field. Some actors push for International criminal justice to be dominated by the logic of interstate relations, others by legalism and still others by moral obligations.' Dixon and Tenove, 'International Criminal Justice', 14.

rights methodologies was behind the more ‘progressive’ jurisprudential developments in the Tribunal’s early years.⁹

As the Tribunal progressed, legal and expert authority superseded moral authority due to the coming together of two different groups of agents within the field who began the process of shifting power away from the witnesses towards the legal agents within the Tribunal. First, and most important, was the intervention of diplomatic agents. As noted above, the UNSC increasingly viewed the ICTR as an unpopular, costly and inefficient organ that should close down as quickly as possible, and diplomatic agents within the UN encouraged measures to achieve this end through the implementation of the completion strategy. Second, and connected, there was the growing presence of judicial agents with greater access to legal and expert authority at the ICTR, generated from within their own primary fields of domestic criminal justice. Such actors included Erik Møse, but perhaps most important here was the appointment of Hassan Jallow as the first prosecutor to serve the ICTR exclusively (rather than both the ICTR and the ICTY), an appointment made by the UNSC. Both groups of agents successfully pushed for more efficient and more highly legalised trials, as discussed previously. The rules of the field shifted, and authority (largely legal and expert) was acquired through ‘efficient’ trials, which in turn effected the role afforded to the witnesses and what records the trials were to archive.

This helps, in part, to explain the legal agents’ rejection of the *amicus curie* brief submitted during *Cyangugu* calling for an amended indictment to include charges of sexual violence—even the prosecution rejected the *amicus*’ request to be heard on this issue—which markedly

⁹ Danner, and Martinez, ‘Guilty Associations’, 132–7.

differed from the response to the *amicus* in *Akayesu*, and, more generally, the legal agents increasingly coercive relationship with the witnesses. This was seen, for instance, in the difference in the treatment that Witnesses BAT and LBH received during *Gatete* and *Cyangugu*, respectively, in comparison to Witness J and Witness H during *Akayesu*. The latter two witnesses were encouraged to provide further details concerning the sexual assaults they had witnessed or endured *despite* these not being mentioned in the indictment. In comparison Witnesses BAT and LBH were rigourously prevented from divulging key information about the sexual assaults witnessed or suffered as a result of the (in part dubious) claim that these alleges were not properly charged within the indictment.¹⁰

Two further points can be made about this. First, in addition to the competition that existed between the different types of agents within the field (say legal and political), these shifts in interests and practices occurred as a result of differences *within* these groups of agents (i.e., legal agents). Indeed, competing ideas about how the Tribunal should function emerged both *between* and *within* the different organs of the Tribunal. This was, for instance, seen in the clashes that occurred between the chambers and the prosecution over the prosecution's indictment policy during *Cyangugu*. This was also apparent in the clear change of approach within the OTP that, for instance, rendered certain previously accepted practices as impermissible; such was the case with push back against Don Webster's attempt at a mega-history in *Karemera et al.*¹¹ Second, I would also argue that the completion strategy, along with the change of guard in the leadership positions at the Tribunal, which occurred simultaneously, had an additional effect of bringing the three organs of the Tribunal closer together. Increasingly these organs appeared to sing from the same hymn sheet and worked in

¹⁰ It is also notable that in Chapter Three the vast majority of the references which detailed the witnesses' ability to retain control over their testimony and its meaning came from *Akayesu*.

¹¹ See also Hagan and Levi, 'Crimes of War' (Intro., n. 87), 1499-1534.

unison towards the same goals, as they each switched their attention towards the efficiency drive. Indeed, what struck me when I was at the Tribunal was the extent to which these organs worked *with* each other for the sake of *the Tribunal*.¹²

Whose Archive

The significance of this in terms of the question of *whose* archive is that it supports what has been the overarching argument throughout this dissertation: at no point was the strategic function, the direction of the trials, nor the way in which the archive was constructed and put to use determined by the interests of those who had suffered during the violence in 1994. Rather, the moments when this constituency appeared to take on central importance were a result of other actors shifting their practices in a manner that meant they gained access to an alternative supply of authority within the field. Such was the case in the early years of the Tribunal when, as argued above, permitting the witnesses a greater role in the trial afforded the legal (and to an extent political) actors greater access to moral authority. The result of this, overall, was that the needs and interests of the witnesses specifically—but Rwandan society more generally—were consistently subsumed by, or rejected in favour of, the interests of the other stakeholders of the Tribunal.

Whilst sometimes interests overlapped and cut across the divisions within the Tribunal and its stakeholders, producing what might be thought of as *moments of justice*, when tensions emerged between stakeholders' interests these were not settled in favour of those that endured the violence, be they victims or perpetrators. As discussed more below, this is not to

¹² In this respect, it was significant that Peter Robinson, Defence counsel in *Government I*, noted his active *resistance* to this sense of becoming part of the 'Tribunal's club', which appeared to be a norm, as he felt this would counter his obligation to defend the interests of his client. Defence Counsel (2016).

deny the witnesses' important contribution to the archive (both in terms of the records that it contains, but also how those records were produced). However, this points to an underlying problem with how international criminal justice has operated to present and the role allocated to witnesses (and the community affected by the violence more generally) within the process. Indeed, a consequence of the apparatus' treatment of those affected by the genocide, seen most clearly at the end of Chapter Six, was that in a number of respects those who had suffered in 1994 were further harmed as a result of cooperating with the Tribunal. Even during *Akayesu*, then, when the witnesses' influence over the trial process was perhaps at its greatest, numerous individuals associated with the trial were persecuted and killed in Rwanda. The question becomes, then, who, if not those that suffered as a result of the violence, was the Tribunal for, and whose is the archive?

As argued in Chapter Three, the manner in which the defendants were treated suggests that the Tribunal was also not working with their interests in mind either and, in fact, one of the shifts that occurred at the ICTR was a de-centring of the rights of the defendant as the central pillar of the trial process. Instead, as the above demonstrated, the Tribunal and the archive predominantly belonged to, worked and was primarily constructed in the interests of three other groups of actors.

First the Tribunal worked in the interests of itself as an institution. This only became more so as time went on, as it appeared that the Tribunal had lost sight of those that it was created to assist, instead becoming more introverted in nature as it began to focus on fine-tuning its legal practices and on *surviving* amidst its ever more hostile environment, in the end seemingly existing largely *for itself*. This helps to explain the decision not to pursue the RPF

cases mentioned previously, which whilst questionable from every other perspective (and despite the negative impact this could have on Rwandan's transition) meant that the Tribunal could at least *survive*. This was, overall, also reflected in how the Tribunal projected and focused its legacy, and what it understood to be the importance of the archive: showing that international criminal justice could work; improving its efficiency as an institution; and producing an important institutional memory. These priorities were, moreover, also increasingly reflected in the content and form of the archive, as the Tribunal's legal actors asserted greater control over how, and what, records were created.¹³

Second, the Tribunal and its archive served the interests of the RPF. Whilst ultimately the decision as it currently stands for the archive to remain in Arusha runs counter to the RPF's wishes, the RPF has nonetheless left an indelible and important mark on the archive. Retrospectively its successful bullying of the Tribunal into shelving the RPF indictments and pursuing *Barayagwiza* is staggering. Even though it does not (yet) have possession of the physical archive, the records of the archive very much reflect the RPF's understanding of the genocide. The account of violence contained within the archive, and the way the Tribunal has functioned more generally, has, moreover, as Peskin has argued, only added further capital to the RPF's victim status, used to pursue dubious politics elsewhere.¹⁴

Finally, the archive worked in the interests of, and was shaped by, the UNSC. Here the Tribunal and its archive symbolically demonstrated the international communities' resolve to make 'Never Again' a reality, offering a supply of symbolic capital even in the midst of

¹³ This is not to say, however, that the way in which the early trials were conducted did not, as argued above, reflect this group's interests also. Indeed, the way these agents adapted to the political climate that surrounded the Tribunal, *and produced records accordingly*, demonstrates their hold over the archive throughout.

¹⁴ Peskin, *International Justice* (see Intro., n. 75), 192.

ensuing violence and authoritarianism elsewhere (including within Rwanda and its neighbouring countries). Once this was thought to have been achieved, or where the costs of pursuing this outweighed the benefits, the UNSC instead turned its attention to closing the Tribunal down as quickly as possible, which came with the consequences that were discussed above. Ultimately, as the UNSC's decision over the location of the archive suggested, it was really this constituency that controlled the archive and determined its function to the greatest extent. Had the UNSC, or perhaps more exactly the P5, decided to allow the Tribunal to complete its mandate as it had originally intended, had it provided more finances for it to do so (or at least equal finances and support to what was offered to the ICTY), and had it applied more pressure on Rwanda to cooperate with the Tribunal (as it—along with the EU—more or less successfully did with Serbia and Croatia at the ICTY),¹⁵ then the contents of the archive would likely be very different.

Looking Forwards

When looking to the future of international criminal justice, two aspects need to be considered. The first is to consider what gaps in our understanding of international criminal justice need to be filled in order to better understand the ICTR's purpose and lasting effect on the international system. The second is to make some provisional suggestions as to how the current international criminal justice project might be improved.

It must be stressed that I do not wish to once more dismiss the significance of the witness in the trial process, nor write off the value of the archive. Rather the analysis has sought to place

¹⁵ Hagan and Levi, 'Crimes of War' (see Intro., n. 87), 1516.

the witness's role in context and to explore what, at its core, the Tribunal was trying to achieve and in whose interest, and why the archive exists as it does. Even if the witnesses worked under a set of rules determined to a large extent by other actors, this does not essentially detract from the important role that they played in the construction of the archive, nor the mark they left on it, particularly in the Tribunal's early years. To dismiss this once more would not only present an unreflective portrait of these courts (and to fall back on the overly simplistic notion of victim passivity) but it would also be to miss that the archive contains records of great value for various types of actors in the future. This leads to two further lines of enquiry.

First, whilst I have explored the way in which the Tribunal and witnesses worked with and against each other in the construction of the archive, I have not explored how this process impacted the witnesses personally. As such I have tried to avoid making claims about whether or not this process empowered or re-traumatised the witnesses—claims that remain largely unsubstantiated within the current literature. Before any final conclusions over legacy of the Tribunal can be made, more needs to be learnt about how the process was *experienced* by witnesses, and by Rwandan society more generally.¹⁶ This would need to include a consideration of how different sections of Rwandan society (e.g. victims, perpetrators, bystanders, returnees) responded differently to the Tribunal. This would also contribute towards our understanding of what impact these courts have on societies that have endured violence. This is especially important as the findings here suggest that these courts are likely to have either a limited, or worse negative, impact on these communities.

¹⁶ Only three studies have attempted to begin to explore this question: in relation to the ICTY (Stover, *The Witnesses* (see Intro., n. 54); and ICTY and University of North Texas, 'Echoes of Testimony' at: <http://www.icty.org/en/about/registry/witnesses/echoes-of-testimonies—a-unique-research-project> (last accessed 15/08/2017). African Rights and Redress also produced a short analysis on this based on witnesses' experiences at the ICTR. Redress, *Survivors and Post-genocide Justice in Rwanda* (see Chap. Three, n. 17).

Further research is also needed to explore how, and to what effect, the records of the archive have been used beyond the ICTR. This is both to consider the role that these might have played in constructing a ‘collective memory’ of the violence in Rwanda and beyond, and here the GSP becomes of central concern. But this would include a consideration of how, or if, particular legal decisions rendered by the Tribunal had any effect ‘outside’ of the courtroom in terms of how individuals, states, militaries, and, in indeed, other courts act.¹⁷ This becomes particularly important when considered in the light of the findings here, which have shown the problematic nature of certain jurisprudential decisions rendered at the ICTR. How has, for example, the jurisprudence on sexual violence, JCE or superior responsibility fed back into various acts of violence being committed in the ‘real world’? This would also respond to Edkins’ and Dauphinee’s call to be aware of the ways that these courts have perpetuated some forms of violence within the international system.¹⁸ Combined, then, this calls for the ‘afterlife’ of the archive to be understood in greater depth.

What do these findings suggest for ways in which the current approach to international criminal justice can be improved? A relatively simplistic, but important, change would be for all parties to be more aware of the implications of the (political) messages that result from the accounts of violence they produce. This is not to suggest that the legal actors need to become ‘historians’ (although I would dispute any claim that there was a huge difference between the two) nor that they need to ‘corrupt’ the principles of law. Rather they should take heed that any legal proceeding tells a story and so what that story is needs to be seriously thought through before its telling. Indeed, as I have suggested above, there is an extent to which this

¹⁷ As Sally Merry has shown, the way that international norms are ‘translated’ into local contexts is a complicated process. Merry, ‘New Legal Realism’ (see Intro., n. 87), 978-9.

¹⁸ See Chap. One, n. 85.

is already a common practice amongst legal actors. All prosecution offices, for instance, construct indictments to reflect certain interests (both legal and political), such as the initial attempts at the ICTR to construct a broad account of the genocide, or the focus on child soldiers in *Lubanga* at the ICC. As such, arguably all that is required is that more attention be paid to make sure that these stories produce positive statements about the type of international community that these courts are involved in constructing. For instance, the prosecution in *Lubanga* should have been more aware of the negative consequences of their refusal to exclude sexual violence charges in their indictment. This, however, requires a greater amount of forward planning than appears to be the norm at present in international courts, so as to avoid some of the errors that were made at the outset of the ICTR, which it never recovered from (such as the neglect of sexual violence during initial investigations).

Equally, all legal actors need to seriously reflect on how they are, at present, handling evidence. Of particular concern is how sexual violence evidence is being approached and the higher standard of proof it is being assessed against. The extent of the challenge in securing change in these respects can be seen from the difficulty that activists, scholars and practitioners have faced when trying to make municipal courts recognise the gendered and racially charged nature of their decisions—acknowledging this kind of deep-unconsciousness bias threatens the whole system.¹⁹ However, without change in this respect, courts will continue to function as spaces that work in the interests of the powerful rather than those most vulnerable within society.

¹⁹ See Intro., n. 94.

Finally, if international courts are to continue to be used in response to violence, greater thought needs to be given as to how witnesses and affected communities can be better integrated in the trial process. If the focus shifts away solely from trial efficiency and output, as this dissertation suggested was the case in the early trials at the ICTR, then it is possible to think through more carefully about how and where the needs of the affected communities could be incorporated within these spaces without fundamentally altering the main purpose of the courts: to deliver verdicts of guilt or innocence. Such changes could include: working with affected communities to determine what charges and crimes are important to them (something that the ICC's statute provide for, but that the OTP still appears to resist); informing them in greater detail about the processes and outcomes of the court; and seeing where other support might be offered. These relatively small and achievable changes would go some way to addressing the current imbalance of power within the trial process.

Appendix

Throughout the dissertation, I explore the specific accounts of violence that were produced in three trials (*Akayesu*, *Cyangugu*, and *Gatete*) at the ICTR. As stated in the introduction, I am interested in exploring the patterns that exist with how accounts were constructed at the Tribunal, and as such I am not exploring the trials individually, but rather what each of these tells us about broader themes and issues at play; this is also why I elected to structure the dissertation as I have, rather than having a chapter for each trial. However, this means that I never discuss any particular trial at great length, so this appendix briefly outlines each of the trials in turn in order to provide the reader some contextual information.

Akayesu

Jean-Paul Akayesu was a bourgmestre (roughly equivalent to a mayor) of the Taba commune, Gitarama Prefecture, during the genocide. He was captured in Zambia in 1995.¹ The initial indictment contained twelve counts ranging from genocide to war crimes, and focused on Akayesu's role in leading the genocide in Taba from his position of authority as bourgmestre.² The crux of the case was that Akayesu was a power-hungry individual who would do anything to advance his political career. As such, he had opposed the genocide in his commune when it had politically suited him to do so. However, having attended a prefectural meeting in Gitarama on 18 April 1994, where the interim government called for all Hutus to unite against the common enemy (the Tutsi) in order so that the political elite

¹ ICTR-96-4, ICTR-96-4-0459/1, *Akayesu – Judgement*, 02/09/1998, para 9.

² ICTR-96-4-0003, *Akayesu – Indictment*, 13/02/1996.

could cling onto their power, Akayesu became a willing participant in the violence. Consequently, Akayesu returned to Taba where, at a meeting in Gishyeshye, he publicly incited the local population to begin killing. The killing commenced shortly after this.³

Specific charges were also levelled against Akayesu for the period after the violence began. Primarily this concerned the murder of eight refugees delivered from the neighbouring commune (Runda) to the bureau communal and the murder of a number of teachers and other intellectuals also at the bureau communal. Another important narrative constructed at the trial concerned Akayesu's crazed pursuit of several individuals who were seen as significant persons within the local community. These included the hunt for Emphrem Karangwa (the former Inspector of Judicial Police), which resulted in the death of his brothers in a neighbouring commune, and a similarly crazed pursuit of Alexia, wife of Pierre Ntereye (a prominent figure within the commune), which resulted in a number of victims being tortured.⁴

This story was expanded at the end of the prosecution's case, as the OTP requested leave in order to submit an amended indictment, which would introduce three counts of sexual violence.⁵ This was for Akayesu's role in overseeing the systematic rape of women at the bureau communal, which two witnesses had brought to the Tribunal's attention whilst testifying in court. The Chambers consented to the prosecution's request, and the prosecution's case reopened with five additional witnesses heard.⁶

³ See CONTRA001175, *Akayesu – Transcript of 9/1/1997*, 09/01/1997, 8-73.

⁴ ICTR-96-4-0003; and CONTRA001175.

⁵ ICTR-96-4-0555, *Akayesu – Leave to Amend the Indictment*, 17/06/1997

⁶ ICTR-96-4-0459/1, *Akayesu – Judgement*, 02/09/1998, 37.

Overall, over 43 trial days, 41 witnesses took to the stand, in a trial that, from arrest to appeals judgement, took just over five years and eight months.⁷ Ultimately, the trial chamber found (as upheld on appeal) Akayesu guilty of all counts in the indictment, which included the landmark decision that rape could legally be accepted as an act of genocide.⁸

Cyangugu

Cyangugu resulted from the merging of an indictment against Samuel Imanishimwe, Emmanuel Bagambiki and Yussuf Munyakazi with one against André Ntagerura.⁹ However, Munyakazi, a local businessperson in Cyangugu, was severed from the proceedings, after he continued to evade the Tribunal (he was finally captured in 2004 and convicted in 2010). Ntagerura, a Cyangugu native, was the Minister for Transport and Communication during the genocide; Bagambiki was the préfet of Cyangugu; and Imanishimwe was the commandant of the Cyangugu military barracks (Karambo camp). The trial marked the second phase in the OTP's indictment policy which, after the failure of a mega-indictment against 29 individuals (including Ntagerura) in 1999, saw smaller multi-accused indictments clustered around an institution (such as military or government) or region (such as Cyangugu and Butare). In many ways, *Cyangugu* was typical of how the OTP ultimately came to see the genocide play out as it saw a member of government (Ntagerura) take responsibility for the genocide in their home region, working with local and regional military and political personalities

⁷ *Ibid.*, 17, 23–24.

⁸ *Ibid.*, 293.

⁹ *Prosecutor v. André Ntagerura et al.*, Case No. ICTR-96-10 (hereafter ICTR-96-10), ICTR-99-46-0018, [Cyangugu] – Bagambiki – Ntagerura et al – Decision on The Prosecutor's Motion for Joinder, 11/10/1999.

(Bagambiki and Imanishimwe) and other people of significance (Munyakazi) to ensure the success of the plan.¹⁰

The trial hinged on a number of accusations.¹¹ The first was that Ntagerura was the person responsible overall for the genocide in Cyangugu. To this end he convened meetings with local political and military personalities (such as Bagambiki and Imanishimwe) to incite the population to violence prior to the genocide and also ensured, by working with the military (including Imanishimwe) and utilising his access to large vehicles, that the Interahamwe were adequately trained. Once the genocide began it was up to Bagambiki and Imanishimwe to make sure that the violence continued as planned. This resulted in a number of large massacres at Mibilizi, Shangi and Nyamasheke Parishes, as well as on Gashirabwoba football field. This happened along with a sustained attack against refugees in the Kamarampaka Stadium, where Bagambiki and Imanishimwe, on a number of occasions, took refugees out of the stadium in order to execute them. This included one occasion (particularly important during the trial) when seventeen refugees were extracted, killed and then buried in a latrine. In addition, Imanishimwe was accused of rounding up civilians and murdering them in the military camp, and both Bagambiki and Imanishimwe were accused of being responsible for attacks in Kamembe town and in the Nyarushishi refugee camp towards the end of the genocide.¹² Unlike the charges against Akayesu, for many of these acts of violence the accused were not believed to be present during their commission. Rather, they were accused

¹⁰ ICTR-96-10, TRA000207/01, *[Cyangugu] – Ntagerura et al – Redacted Transcript of 18/09/2000*, 18/09/2000, 1-63.

¹¹ See ICTR-96-10, ICTR-96-10A-0311, *Ntagerura Amended Indictment*, 01/11/1999

¹² See also, TRA000207/01, 1-63.

of creating the conditions whereby the violence could occur and directing this from behind the scenes.¹³

The trial took 111 trial days, during which 123 witnesses were heard, and lasted, from the date of Ntagerura's arrest until the provisional appeals judgement, just under ten years.¹⁴ For the OTP, the trial was an unmitigated disaster. Due to a combination of believed defects in the indictment, a scepticism of perpetrator witnesses, and a trial bench driven by an institutionally inspired agenda, the trial chamber found Ntagerura and Bagambiki innocent of all charges and Imanishimwe guilty of only one instance of genocide and one of crimes against humanity (murder).¹⁵ Things got worse on appeal as, due to additional issues with the prosecution's charging, Imanishimwe was acquitted of genocide.¹⁶ As such, not one of the indictees was found to have participated in the genocide.

Gatete

Jean-Baptiste Gatete was a minster within the Ministry of Family Welfare at the time of the genocide, and was previously the bourgmestre of Murambi commune from 1987 until 1993, at which point he was removed from his post amidst accusations that he had been a central figure in a series of attacks against the Tutsis within the region. Gatete's trial was one of the last trials to occur, with the trial judgement being delivered in 2011, after 49 witnesses were

¹³ ICTR-96-10, ICTR-96-10A-0272, *Ntagerura – Prosecutor Request for Leave to File an Amended Indictment*, 02/12/1999.

¹⁴ ICTR-96-10, ICTR-99-46-0599/1, *Trial Judgement – the Prosecutor v. André Ntagerura Emmanuel Bagambiki Samuel Imanishimwe*, 25/02/2004, 1–4.

¹⁵ *Ibid.*, 208-14.

¹⁶ *Prosecutor v. Jean Baptiste Gatete*, Case No. ICTR-99-46 (hereafter ICTR-99-46), TRA003809/1, [Cyangugu] – *Ntagerura et al – Redacted Transcript of 07/07/2006 – Appeals Judgement*, 07/07/2006, 54.

heard over 30 trial days. Whilst Gatete's trial was amongst the quickest (with the substance of the trial over in under five months), it took nearly ten years from his arrest for the Tribunal to deliver his appeals judgement.¹⁷

The main accusation against Gatete was that once the genocide had started he returned to Murambi where, from 7 April onwards, he organised and incited the locality into participating in the genocide. This included his role in a number of large scale massacres at Kiziguro and Mukarange Parishes where he personally directed the killing and provided weapons as he contributed to a 'joint criminal enterprise' that was designed to wipe out the Tutsis within the region.¹⁸

As even this description suggests, Gatete's trial was the most compact out of the three, and over the course of a series of amendments to the indictment a number of charges against Gatete were dropped as the OTP pursued increasingly streamlined and efficient trials.¹⁹ Gatete was found guilty of all remaining charges, mostly for his role in a joint criminal enterprise (JCE).²⁰

¹⁷ ICTR-00-61, ICTR-00-61-0240/1, *Gatete – Judgement and Sentence*, 31/03/2011, 1 and 177–178.

¹⁸ ICTR-00-61, ICTR-00-61-0036/1, *Gatete – Amended indictment*, ICTR-00-61, 10/05/2005; and ICTR-00-61, TRA001643/1, *Gatete – Redacted Transcript of 20/10/2009*, 20/10/2009.

¹⁹ ICTR-00-61-0036/1; ICTR-00-61, ICTR-00-61-0074/1, *Gatete – the Prosecutor's Submission Complying with the Decision on Defence Motion Concerning Defects in the Amended Indictment Dated 3 July 2009*, 07/07/2009.

²⁰ ICTR-00-61-0240/1, 169-70

Bibliography

Primary Research

Interviews

Anonymous (Arusha, Tanzania: June, 2015).

Anonymous 2 (Interview via Skype: April, 2016).

Appeals Attorney – ICTR Office of the Prosecutor (Arusha, Tanzania: June, 2015).

Appeals Judge – *ad hoc* International Tribunals (Copenhagen, Denmark: June, 2016).

Defence Counsel – ICTR and ICTY (Interview via Skype: February, 2016).

Deputy Appeals Chief – ICTR Office of the Prosecutor (Arusha, Tanzania: June, 2015).

Head of Appeals – ICTR Office of the Prosecutor (Arusha, Tanzania: June, 2015).

ICTR President – (Arusha, Tanzania: June, 2017).

Member of ICTR Archives Unit – (Arusha, Tanzania: June, 2015).

Member of the ICTR Victim and Witness Support Section – (Arusha, Tanzania: June, 2015).

Senior Appeals Attorney – ICTR Office of the Prosecutor (Arusha, Tanzania: June, 2015).

Senior ICTR Appeals Attorney – (Arusha, Tanzania: June, 2015).

Senior ICTR Appeals Attorney 2 – (Arusha, Tanzania: June, 2015).

Senior Information and Evidence Section Officer – ICTR Office of the Prosecutor (Arusha, Tanzania: June, 2015).

Senior Investigator – ICTR Office of the Prosecutor (Arusha, Tanzania: June, 2015).

Senior Legal Office – ICTR Chambers (Copenhagen, Denmark: June, 2016).

Senior Member of ICTR Office of the Prosecutor – (Arusha, Tanzania: June, 2015).

Senior Member of ICTR Office of the Prosecutor 2 – (Arusha, Tanzania: June, 2015).

Senior Member of the ICTR Office of the Prosecutor 3 – (Arusha, Tanzania: June, 2015).

Senior Reviser – ICTR Registry (Arusha, Tanzania: June, 2015).

Trial Documents¹

Akayesu (Case No: ICTR-96-4)

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, CONTRA00001, *Akayesu – Transcript of 31/10/1996 – Motion*, 31/10/1996.

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, ICTR-96-4-0028, *Akayesu – Inter-Office Memo Transmitting a Brief in Response to a Preliminary Motion*, 04/09/1996.

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, ICTR-96-4-0037, *Akayesu – Initial Appearance of Jean-Paul Akayesu*, 20/05/1996.

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, ICTR-96-4-0052, *Akayesu – Law in support of Motion to Consider Registrar’s Denial and Additional Assistance to Akayesu, and Request for Evidentiary Hearing of Fact*, 24/10/1996.

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, ICTR-96-4-0065, *Akayesu – Defense Request for Expedited Amendment of the Directive on Assignment of Defense Counsel so that Mr. Akayesu can Enjoy the Same Rights, Privileges and Resources as Accused Before ICTY*, 07/11/1996.

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, ICTR-96-4-0070, *Akayesu – Avocat Johan Scheers Involvement in the Akayesu Case*, 13/11/1996.

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, ICTR-96-4-0076, *Akayesu – Your Memorandum on Proposed Requests of Needed Resources*, 15/11/1996.

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, ICTR-96-4-0081, *Akayesu – Missing Items from Documents Produced On 6/11/96*, 12/11/1996.

¹ Organisational note: these transcript references are organised by trial, in the sub-headings, and then by specific document code, as CONTRA00001 in the first record. The latter are then used for the shortened footnotes.

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, ICTR-96-4-0088, *Akayesu – Decision on the Request of the Accused for the Replacement of Assigned Counsel*, 20/11/1996.

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, ICTR-96-4-0116, *Akayesu – Motion to the President and Judges of the ICTR*, 10/01/1997.

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, ICTR-96-4-0121, *Akayesu – Prosecution's Motion for the Expungement of Identifying Information about Witnesses from the Record*, 20/1/1997.

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, ICTR-96-4-0141, *Akayesu – Decision on Postponement of the Trial*, 13/01/1997.

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, ICTR-96-4-0160, *Akayesu – Decision on the Preliminary Motions Presented by the Prosecution and the Defence*, 17/02/1997.

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, ICTR-96-4-0183, *Akayesu – Amicus Brief Respecting Amendment of the Indictment and Supplementation of the Evidence to Ensure the Prosecution of Rape and Other Sexual Violence within the Competence of the Tribunal*, 28/05/1997.

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, ICTR-96-4-0222, *Akayesu – Decision on Motion to Subpoena a Witness*, 19/11/1997.

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, ICTR-96-4-0249, *Akayesu – Motion for Inspection of the Site and for the Conduct of a Forensic Analysis*, 09/12/1997.

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, ICTR-96-4-0266, *Akayesu – Order Granting Leave for Amicus Curiae to Appear*, 12/02/1998.

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, *Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4, ICTR-96-4-0284, *Akayesu – Setting Date for Hearing of Motions on False Testimony by Prosecution Witnesses under Declaration in the Matter of the Prosecutor vs. Jean-Paul Akayesu*, 05/03/1998.

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, ICTR-96-4-0294, *Akayesu – Motion for the Issuance of a Summons and for the Protection of an Accused Expert Witness*, 04/03/1998.

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, ICTR-96-4-0303, *Akayesu – Decision on the Defence Motions to Direct the Prosecutor to Investigate the Matter of False Testimony by Witness ‘R’*, 09/03/1998.

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, ICTR-96-4-0306, *Akayesu – Decision on the Defence Motion Transfer, Appearance and Protection of Thirteen Detained Witnesses*, 09/03/1998.

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, ICTR-96-4-0308, *Akayesu – Decision on a Defence Motion for the Appearance of an Accused as an Expert Witness*, 09/03/1998.

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, ICTR-96-4-0314, *Akayesu – Prosecution’s Sentencing Brief*, 21/09/1998.

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, ICTR-96-4-0322, *Akayesu – Sentence Judgement*, 02/10/1998.

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, ICTR-96-4-0340, *Akayesu – Akayesu – Notice of appeal*, 01/10/1998.

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, ICTR-96-4-0381, *Akayesu – Notice of Appeal*, 28/09/1998.

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, ICTR-96-4-0382, *Akayesu – Notice of Appeal of Sentence*, 22/10/1998.

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, ICTR-96-4-0409, *Akayesu – Decision – Suspension of Time Limit for Filing of Appeal Briefs*, 21/10/1999.

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, ICTR-96-4-0459/1, *Akayesu – Judgement*, 02/09/1998.

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, ICTR-96-4-0527, *Akayesu – Decision on the Review of the Indictment*, 16/02/1996.

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, ICTR-96-4-0531, *Akayesu – Decision on the Preliminary Motion Submitted by the Prosecutor for Protective Measures for the Witnesses*, 27/09/1996.

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, ICTR-96-4-0555, *Akayesu – Leave to Amend the Indictment*, 17/06/1997.

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, ICTR-96-4-0730, *Akayesu – Assignment of Defence Counsel Pursuant to Article 19(C) of the Directive on Assignment of Defence Counsel in the Matter of Jean-Paul Akayesu*, 01/11/1996.

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, ICTR-96-4-0731, *Akayesu – Defence Motion for an Expedited Incamera Hearing in Respect of Prosecutorial Misconduct and Other Related Matters*, 04/11/1996.

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, ICTR-96-4-0739, *Akayesu – Prosecutor's Response to Defence Motions*, 12/11/1996.

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, ICTR-96-4-0868/1, *Akayesu – Appeal Judgement*, 01/06/2001.

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, ICTR-96-4-0891, *Akayesu – General Dallaire's Court Appearance – 23 February 1998*, 29/01/1998.

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, ICTR-96-4-0003, *Akayesu – Indictment*, 13/02/1996.

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, CONTRA000049, *Akayesu – Transcript of 1/11/2000 – Appeals Hearing*, 01/11/2000.

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, CONTRA000050, *Akayesu – Transcript of 2/11/2000 – Appeals Hearing*, 02/11/2000.

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, CONTRA001175, *Akayesu – Transcript of 09/1/1997*, 09/01/1997.

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, CONTRA001176, *Akayesu – Transcript of 10/1/1997*, 10/01/1997.

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, CONTRA001177, *Akayesu – Transcript of 13/1/1997*, 13/01/1997.

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, CONTRA001178, *Akayesu – Transcript of 14/1/1997*, 14/01/1997.

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, CONTRA001179, *Akayesu – Transcript of 21/1/1997, 21/01/1997.*

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, CONTRA001180, *Akayesu – Transcript of 22/1/1997, 22/01/1997.*

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, CONTRA001181, *Akayesu – Transcript of 23/1/1997, 23/01/1997.*

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, CONTRA001182, *Akayesu – Transcript of 24/1/1997, 24/01/1997.*

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, CONTRA001183, *Akayesu – Transcript of 15/1/1997, 15/01/1997.*

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, CONTRA001184, *Akayesu – Transcript of 16/1/1997, 16/01/1997.*

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, CONTRA001185, *Akayesu – Transcript of 17/1/1997, 17/01/1997.*

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, CONTRA001182, *Akayesu – Transcript of 24/1/1997, 24/01/1997.*

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, CONTRA001186, *Akayesu – Transcript of 27/1/1997, 27/01/1997.*

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, CONTRA001187, *Akayesu – Transcript of 28/1/1997, 28/01/1997.*

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, CONTRA001188, *Akayesu – Transcript of 29/1/1997, 29/01/1997.*

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, CONTRA001189, *Akayesu – Transcript of 30/1/1997, 30/01/1997.*

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, CONTRA001190, *Akayesu – Transcript of 4/2/1997, 04/02/1997.*

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, CONTRA001191, *Akayesu – Transcript of 13/2/1997, 13/02/1997.*

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, CONTRA001192, *Akayesu – Transcript of 14/2/1997, 14/02/1997.*

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, CONTRA001193, *Akayesu – Transcript of 18/2/1997, 18/02/1997.*

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, CONTRA001195, *Akayesu – Transcript of 6/3/1997, 06/03/1997.*

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, CONTRA001196, *Akayesu – Transcript of 7/3/1997, 07/03/1997.*

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, CONTRA001197, *Akayesu – Transcript of 5/2/1997, 05/02/1997.*

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, CONTRA001198, *Akayesu – Transcript of 6/2/1997, 06/02/1997.*

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, CONTRA001199, *Akayesu – Transcript of 11/2/1997, 11/02/1997.*

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, CONTRA001200, *Akayesu – Transcript of 12/2/1997, 12/02/1997.*

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, CONTRA001201, *Akayesu – Transcript of 25/2/1998, 25/02/1998.*

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, CONTRA001203, *Akayesu – Transcript of 2/3/1998, 02/03/1998.*

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, CONTRA001205, *Akayesu – Transcript of 4/11/1997, 04/11/1997.*

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, CONTRA001207, *Akayesu – Transcript of 17/11/1997, 17/11/1997.*

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, CONTRA001208, *Akayesu – Transcript of 18/11/1997, 18/11/1997.*

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, CONTRA001209, *Akayesu – Transcript of 22/5/1997, 22/05/1997.*

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, CONTRA001210, *Akayesu – Transcript of 23/5/1997, 23/05/1997.*

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, CONTRA001211, *Akayesu – Transcript of 24/5/1997, 24/05/1997.*

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, CONTRA001212, *Akayesu – Transcript of 17/6/1997 – Motion, 17/06/1997.*

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, CONTRA001214, *Akayesu – Transcript of 19/11/1997, 19/11/1997.*

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, CONTRA001217, *Akayesu – Transcript of 9/2/1998, 09/02/1998.*

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, CONTRA001218, *Akayesu – Transcript of 10/2/1998, 10/02/1998.*

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, CONTRA001219, *Akayesu – Transcript of 11/2/1998, 11/02/1998.*

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, CONTRA001220, *Akayesu – Transcript of 13/2/1998, 13/02/1998.*

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, CONTRA001222, *Akayesu – Transcript of 23/10/1997, 23/10/1997.*

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, CONTRA001223, *Akayesu – Transcript of 24/10/1997, 24/10/1997.*

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, CONTRA001224, *Akayesu – Transcript of 27/10/1997, 27/10/1997.*

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, CONTRA001226, *Akayesu – Transcript of 31/10/1997, 31/10/1997.*

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, CONTRA001227, *Akayesu – Transcript of 3/11/1997, 03/11/1997.*

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, CONTRA001228, *Akayesu – Transcript of 5/3/1998, 05/03/1998.*

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, CONTRA001229, *Akayesu – Transcript of 6/3/1998 – Motion*, 06/03/1998.

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, CONTRA001231, *Akayesu – Transcript of 12/3/1998*, 12/03/1998.

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, CONTRA001232, *Akayesu – Transcript of 13/3/1998*, 13/03/1998.

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, CONTRA001233, *Akayesu – Transcript of 28/09/1998 – Sentencing Hearing*, 28/09/1998.

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, CONTRA001235, *Akayesu – Transcript of 19/03/1998*, 19/03/1998.

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, CONTRA001236, *Akayesu – Transcript of 23/3/1998*, 23/03/1998.

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, CONTRA001238, *Akayesu – Transcript of 26/03/1998*, 26/03/1998.

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, CONTRA001240, *Akayesu – Transcript of 26/09/1996 – Motion*, 26/09/1996.

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, CONTRA001241, *Akayesu – Transcript of 27/09/1996 – Decision*, 27/09/1996.

Cyangugu (Case Nos: ICTR-96-10, ICTR-97-36, and ICTR-99-46)

Prosecutor v. André Ntagerura, Case No. ICTR-96-10

Prosecutor v. André Ntagerura, Case No. ICTR-96-10, ICTR-96-10-0212, *Ntagerura – Decision – Confirmation of the Indictment*, 10/08/1996.

Prosecutor v. André Ntagerura, Case No. ICTR-96-10, ICTR-96-10-0227, *Ntagerura – Decision on the Defence Motion for the Protection of Witnesses*, 24/08/1998.

Prosecutor v. André Ntagerura, Case No. ICTR-96-10, ICTR-96-10A-0001, *Ntagerura – Request for the Transfer and Provisional Detention Under Article 40 bis of the Rules of the Procedure and Evidence of the International Criminal Tribunal for Rwanda*, 16/05/1996.

Prosecutor v. André Ntagerura, Case No. ICTR-96-10, ICTR-96-10A-0006, *Ntagerura – Request for Extension of Detention*, 18/06/1996.

Prosecutor v. André Ntagerura, Case No. ICTR-96-10, ICTR-96-10A-0011, *Ntagerura – Decision on Prosecution Request for Extension of Detention*, 10/07/1996.

Prosecutor v. André Ntagerura, Case No. ICTR-96-10, ICTR-96-10A-0014, *Ntagerura – Indictment – Supporting Material – Supporting Documentation*, 09/08/1996.

Prosecutor v. André Ntagerura, Case No. ICTR-96-10, ICTR-96-10A-00314, *Ntagerura – Audio Recording of 20/02/97 – AM*, 20/02/1997.

Prosecutor v. André Ntagerura, Case No. ICTR-96-10, ICTR-96-10A-00320, *Ntagerura – Audio Recording of 27/06/97 – AM*, 27/06/1997.

Prosecutor v. André Ntagerura, Case No. ICTR-96-10, ICTR-96-10A-00323, *Ntagerura – Audio Recording of 27/06/97 – PM*, 27/06/1997.

Prosecutor v. André Ntagerura, Case No. ICTR-96-10, ICTR-96-10A-00326, *Ntagerura – Audio Recording of 08/10/97 – AM*, 08/10/1997.

Prosecutor v. André Ntagerura, Case No. ICTR-96-10, ICTR-96-10A-00329, *Ntagerura – Prosecution Motion (To Order Interpretation of Decision on the Previous Decision)*, 17/03/1998.

Prosecutor v. André Ntagerura, Case No. ICTR-96-10, ICTR-96-10A-00335, *Ntagerura – Audio Recording of 18/03/98 – AM*, 18/03/1998.

Prosecutor v. André Ntagerura, Case No. ICTR-96-10, ICTR-96-10A-00338, *Ntagerura – Audio Recording of 13/05/98 – AM*, 13/05/1998.

Prosecutor v. André Ntagerura, Case No. ICTR-96-10, ICTR-96-10A-00341, *Ntagerura – Audio Recording of 18/11/98 – AM*, 18/11/1998.

Prosecutor v. André Ntagerura, Case No. ICTR-96-10, ICTR-96-10A-00347, *Ntagerura – Audio Recording of 19/03/99 – AM*, 19/03/1999.

Prosecutor v. André Ntagerura, Case No. ICTR-96-10, ICTR-96-10A-00350, *Ntagerura – Audio Recording of 11/08/1999 – AM*, 11/08/1999.

Prosecutor v. André Ntagerura, Case No. ICTR-96-10, ICTR-96-10A-00353, *Ntagerura – Audio Recording of 26/05/00 – AM*, 26/05/2000.

Prosecutor v. André Ntagerura, Case No. ICTR-96-10, ICTR-96-10A-0044-6, *Ntagerura – Annex B of Prosecutor's Motion for Protective Measures for Witnesses*, 24/03/1997.

Prosecutor v. André Ntagerura, Case No. ICTR-96-10, ICTR-96-10A-0046, *Ntagerura – Motion by the Office of the Prosecutor for Orders for Protective Measures for Victims and Witnesses to Crimes Alleged in the Indictment*, 24/03/1997.

Prosecutor v. André Ntagerura, Case No. ICTR-96-10, ICTR-96-10A-0047, *Ntagerura – Affidavit of Oyvind H. Olsen*, 24/03/1997.

Prosecutor v. André Ntagerura, Case No. ICTR-96-10, ICTR-96-10A-0051, *Ntagerura – Brief in Support of the Motion by the Defence for Orders for Protective Measures for Victims and Witnesses to Crimes Alleged in the Indictment ICTR-96-10A-I*, 24.03.1997, ICTR-96-10A-0044-6), 24/03/1997.

Prosecutor v. André Ntagerura, Case No. ICTR-96-10, ICTR-96-10A-0070, *Ntagerura – Brief in Reply to the Motion Filed by the Office of the Prosecutor for Orders for Protective Measures for Victims and Witnesses to Crimes Alleged in the Indictment ICTR-96-10-A-I*, 24/06/1997.

Prosecutor v. André Ntagerura, Case No. ICTR-96-10, ICTR-96-10A-0072, *Ntagerura – Brief in Response to the Preliminary Motions*, 29/07/1997.

Prosecutor v. André Ntagerura, Case No. ICTR-96-10, ICTR-96-10A-0185, *Ntagerura – Decision on the Prosecution Motion for Interpretation of a Decision by the Trial Chamber*, 01/07/1998.

Prosecutor v. André Ntagerura, Case No. ICTR-96-10, ICTR-96-10A-0194, ICTR-96-10, *Ntagerura – Preliminary Motion (Defects in the Indictment)*, 21/04/1997.

Prosecutor v. André Ntagerura, Case No. ICTR-96-10, ICTR-96-10A-0203, *Ntagerura – Copy of Draft of Motion (on 'Convening of a Status Conference' and Setting of a Date for the Trial) Forwarded to Ntagerura for Comments by Defence Counsel*, 04/11/1997.

Prosecutor v. André Ntagerura, Case No. ICTR-96-10, ICTR-96-10A-0205, *Ntagerura – Motion by the Defence for Orders for Protective Measures for the Defence Witness*, 16/10/1997.

Prosecutor v. André Ntagerura, Case No. ICTR-96-10, ICTR-96-10A-0207, *Ntagerura – Decision on the Prosecutor's Motion for the Protection of Witness*, 27/06/1997.

Prosecutor v. André Ntagerura, Case No. ICTR-96-10, ICTR-96-10A-0208, *Ntagerura – Decision on the Preliminary Motion Filed by the Defence Based on Defects in the Form of the Indictment*, 28/11/1997.

Prosecutor v. André Ntagerura, Case No. ICTR-96-10, ICTR-96-10A-0208, *Ntagerura – Decision on the Preliminary Motion Filed by the Defence Based on Defects in the Form of the Indictment*, 28/11/1997.

Prosecutor v. André Ntagerura, Case No. ICTR-96-10, ICTR-96-10A-0209, *Ntagerura – Prosecutor's Reply to Defence Motion to have Protective Measures Ordered for the Defence Witnesses*, 24/11/1997.

Prosecutor v. André Ntagerura, Case No. ICTR-96-10, ICTR-96-10A-0215, *Ntagerura – Prosecutor's Motion to Order Interpretation of Decision No. ICTR-96-10a-I of 11/28/1997*, 29/12/1997.

Prosecutor v. André Ntagerura, Case No. ICTR-96-10, ICTR-96-10A-0216, *Ntagerura – Prosecutor's Response to a Defence Motion Seeking a Ruling that the Amended Indictment*, 11/09/1998.

Prosecutor v. André Ntagerura, Case No. ICTR-96-10, ICTR-96-10A-0216, *Ntagerura – Prosecutor's Response to a Defence Motion Seeking a Ruling that the Amended Indictment*, 11/09/1998.

Prosecutor v. André Ntagerura, Case No. ICTR-96-10, ICTR-96-10A-0224, *Ntagerura – Amended Indictment*, 29/01/1998.

Prosecutor v. André Ntagerura, Case No. ICTR-96-10, ICTR-96-10A-0272, *Ntagerura – Prosecutor Request for Leave to File an Amended Indictment*, 02/12/1999.

Prosecutor v. André Ntagerura, Case No. ICTR-96-10, ICTR-96-10A-0311, *Ntagerura Amended Indictment*, 01/11/1999.

Prosecutor v. Emmanuel Bagambiki, Samuel Imanishimwe and Yussuf Munyakazi, ICTR-97-36

Prosecutor v. Emmanuel Bagambiki, Samuel Imanishimwe and Yussuf Munyakazi, Case No. ICTR-97-36, ICTR-97-36-0009, *Imanishimwe – Affidavit of Oyvind Olsen in Support of an Application by the Prosecutor Under Rule 40 Bis (F) to Extend Detention for a Further Period of 30 Days*, 23/08/1997.

Prosecutor v. Emmanuel Bagambiki, Samuel Imanishimwe and Yussuf Munyakazi, Case No. ICTR-97-36, ICTR-97-36-0010, *Request for an Order for an Extension of a Provisional Detention Order Under Article 40 Bis*, 29/8/1997, *Request for an Order for an Extension of a Provisional Detention Order Under Article 40 Bis*, 29/08/1997.

Prosecutor v. Emmanuel Bagambiki, Samuel Imanishimwe and Yussuf Munyakazi, Case No. ICTR-97-36, ICTR-97-36-00189, *Bagambiki – Audio Recording of 08/09/97 – AM*, 08/09/1997.

Prosecutor v. Emmanuel Bagambiki, Samuel Imanishimwe and Yussuf Munyakazi, Case No. ICTR-97-36, ICTR-97-36-00192, *Bagambiki – Audio Recording of 27/11/97 – AM*, 27/11/1997.

Prosecutor v. Emmanuel Bagambiki, Samuel Imanishimwe and Yussuf Munyakazi, Case No. ICTR-97-36, ICTR-97-36-00195, *Bagambiki – Audio Recording of 25/03/98 – AM*, 25/03/1998.

Prosecutor v. Emmanuel Bagambiki, Samuel Imanishimwe and Yussuf Munyakazi, Case No. ICTR-97-36, ICTR-97-36-00207, *Bagambiki – Audio Recording of 05/11/1998 – AM*, 05/11/1998.

Prosecutor v. Emmanuel Bagambiki, Samuel Imanishimwe and Yussuf Munyakazi, Case No. ICTR-97-36, ICTR-97-36-00210, *Bagambiki – Audio Recording of 19/04/1999 – AM*, 19/04/1999.

Prosecutor v. Emmanuel Bagambiki, Samuel Imanishimwe and Yussuf Munyakazi, Case No. ICTR-97-36, ICTR-97-36-00219, *Bagambiki – Audio Recording of 29/11/1999*, 29/11/1999.

Prosecutor v. Emmanuel Bagambiki, Samuel Imanishimwe and Yussuf Munyakazi, Case No. ICTR-97-36, ICTR-97-36-0039/1, *Imanishimwe Preliminary Motions*, 28/01/1998.

Prosecutor v. Emmanuel Bagambiki, Samuel Imanishimwe and Yussuf Munyakazi, Case No. ICTR-97-36, ICTR-97-36-0043, *Preliminary Motions*, 18/02/1998.

Prosecutor v. Emmanuel Bagambiki, Samuel Imanishimwe and Yussuf Munyakazi, Case No. ICTR-97-36, ICTR-97-36-0048, *The Prosecutor's Brief in Reply to the Defence Preliminary Motions on Behalf of Samuel Imanishimwe*, 24/03/1998.

Prosecutor v. Emmanuel Bagambiki, Samuel Imanishimwe and Yussuf Munyakazi, Case No. ICTR-97-36, ICTR-97-36-0049, *Motion for Redefinition of Facts*, 10/02/1998.

Prosecutor v. Emmanuel Bagambiki, Samuel Imanishimwe and Yussuf Munyakazi, Case No. ICTR-97-36, ICTR-97-36-0050, *Motion for Separate Hearings*, 10/02/1998.

Prosecutor v. Emmanuel Bagambiki, Samuel Imanishimwe and Yussuf Munyakazi, Case No. ICTR-97-36, ICTR-97-36-0053, *Imanishimwe – Transcripts of Record of Interview with Samuel Imanishimwe / Cassette Entretien Avec Samuel Imanishimwe*, 14/8/1997.

Prosecutor v. Emmanuel Bagambiki, Samuel Imanishimwe and Yussuf Munyakazi, Case No. ICTR-97-36, ICTR-97-36-0055/1, *Bagambiki – Audio Recording of 18/05/1998 – AM*, 18/05/1998.

Prosecutor v. Emmanuel Bagambiki, Samuel Imanishimwe and Yussuf Munyakazi, Case No. ICTR-97-36, ICTR-97-36-0055/1, *Motion for Protective Measures Regarding Defence Witnesses*, 18/05/1998.

Prosecutor v. Emmanuel Bagambiki, Samuel Imanishimwe and Yussuf Munyakazi, Case No. ICTR-97-36, ICTR-97-36-0056, *Imanishimwe – Prosecutor's Brief in Response to the Motion by the Defence for Protective Measures Regarding Defence Witnesses*, 18/07/1998.

Prosecutor v. Emmanuel Bagambiki, Samuel Imanishimwe and Yussuf Munyakazi, Case No. ICTR-97-36, ICTR-97-36-0062, *Imanishimwe – Bagambiki – Munyakazi – Decision on the Defence Motion Regarding Defects in the Form of the Indictment*, 24/09/1998.

Prosecutor v. Emmanuel Bagambiki, Samuel Imanishimwe and Yussuf Munyakazi, Case No. ICTR-97-36, ICTR-97-36-0063, *Bagambiki – Imanishimwe – Munyakazi – Separate Opinion of Judge Sekule on the Decision of the Defence Motion on Defects in the Form of the Indictment*, 01/10/1998.

Prosecutor v. Emmanuel Bagambiki, Samuel Imanishimwe and Yussuf Munyakazi, Case No. ICTR-97-36, ICTR-97-36-0071, *Bagambiki – Imanishimwe – Indictment – Redacted*, 09/10/1997.

Prosecutor v. Emmanuel Bagambiki, Samuel Imanishimwe and Yussuf Munyakazi, Case No. ICTR-97-36, ICTR-97-36-0081/1, *Bagambiki – Imanishimwe – Munyakazi – Motion by the Office of the Prosecutor for Orders for Protective Measures for Victims and Witnesses to Crimes Alleged in the Indictments*, 07/05/1999.

Prosecutor v. Emmanuel Bagambiki, Samuel Imanishimwe and Yussuf Munyakazi, Case No. ICTR-97-36, ICTR-97-36-0111, *Bagambiki – Imanishimwe – Munyakazi – Motion by Defence Counsel for Samuel Imanishimwe Lodging an Interlocutory Appeal Regarding the Jurisdiction of Trial Chamber III*, 04/11/1999.

Prosecutor v. Emmanuel Bagambiki, Samuel Imanishimwe and Yussuf Munyakazi, Case No. ICTR-97-36, ICTR-97-36-0115, *Bagambiki – Imanishimwe – Munyakazi – Brief in Support of the Motion by Counsel for Samuel Imanishimwe for an Interlocutory Appeal on the Jurisdiction of Trial Chamber III*, 23/11/1999.

Prosecutor v. Emmanuel Bagambiki, Samuel Imanishimwe and Yussuf Munyakazi, Case No. ICTR-97-36, ICTR-97-36-0146/1, *Bagambiki – Imanishimwe – Munyakazi – Decision on the Defence Motion for the Protection of Witnesses*, 30/09/1998.

Prosecutor v. Emmanuel Bagambiki, Samuel Imanishimwe and Yussuf Munyakazi, Case No. ICTR-97-36, ICTR-97-36-0150, *Bagambiki – Imanishimwe – Munyakazi – Decision on the Defence Motion for the Separation of Crimes and Trials*, 01/10/1998.

Prosecutor v. Emmanuel Bagambiki, Samuel Imanishimwe and Yussuf Munyakazi, Case No. ICTR-97-36, ICTR-97-36-0152, *Imanishimwe – Bagambiki – Munyakazi – Decision on the Defence Motion for Disclosure in Respect of Samuel Imanishimwe*, 20/09/1998.

Prosecutor v. Emmanuel Bagambiki, Samuel Imanishimwe and Yussuf Munyakazi, Case No. ICTR-97-36, ICTR-97-36-0229, *Samuel Imanishimwe – Decision Motion for Review*, 12/07/2000.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICT-99-46

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0550, [Cyangugu] – *Ntagerura et al – Decision on the Defence Motion for the Transfer of a Detained Witness from Rwanda Rule 90 Bis*, 17/02/2003.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0001, *Prosecutor's Motion for Joinder of the Accused (Ntagerura, ICTR-96-10A-T0, Bagambiki ICTR-97-36-T, Imanishimwe ICTR-97-36-I, and Munyakazi ICTR-97-36-I)*, 02/04/1999.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0014, [Cyangugu] – *Bagambiki – Ntagerura et al – Prosecutor's Reply to the Brief in Reply Filed by the Defence for Ntagerura Andre*, 26/06/1999.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0015, [Cyangugu] – *Bagambiki – Ntagerura et al – Reply of the Accused Ntagerura Andre to the Prosecutor's Motion for the Joinder of his Trial with that of the Accused Samuel Imanishimwe*, 05/07/1999.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0017, [Cyangugu] – *Bagambiki – Ntagerura et al – Prosecutor's Reply to the Brief in Reply Filed by the Defence for Samuel Imanishimwe*, 26/06/1999.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0018, [Cyangugu] – *Bagambiki – Ntagerura et al – Decision on the Prosecutor's Motion for Joinder*, 11/10/1999.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0031, [Cyangugu] – *Bagambiki – Ntagerura et al – Motion*

Seeking Adjournment of on Going Proceeding and of Commencement of Trial Under Rules 73 and 72, 05/11/1999.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0032, [Cyangugu] – Bagambiki – Ntagerura et al – Motion by Defence of Samuel Imanishimwe for a Stay of the Proceedings of the Status Conference, 19/11/1999.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0046, [Cyangugu] – Bagambiki – Ntagerura et al – Notice of the Prosecutor to Withdraw All Pending Motion, 14/02/2000.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0072, [Cyangugu] – Bagambiki – Ntagerura et al – The Prosecutor's Preliminary Pre-Trial Brief, 24/05/2000.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-01002, Ntagerura – Audio Recording of 10/08/99 – AM, 10/10/1999.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0102, [Cyangugu] – Bagambiki – Ntagerura et al – Motion Objecting Non-Compliance with the Rules and Material Prejudice to the Accused, 07/06/2000.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0102, [Cyangugu] – Bagambiki – Ntagerura et el – Motion Objecting Non-Compliance with the Rules and Material Prejudice to the Accused, 07/06/2000.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0110, [Cyangugu] – Ntagerura – Prosecutor's Brief in Response to the Notice of Appeal Filed by Defence Counsel for Andre Ntagerura Against the Decision of 11/10/1999 on Joinder, 14/03/2000.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0111, [Cyangugu] – Bagambiki – Imanishimwe – Prosecutor's Brief in Response to the Notice of Appeal Filed by Defence Counsel for Emmanuel

Bagambiki and Samuel Imanishimwe Against the Decision of 11/10/1999 on the Prosecutor's Motion, 14/03/2000.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0125, [Cyangugu] – Imanishimwe – Prosecutor's Brief in Reply to the Motion by Samuel Imanishimwe's Defence Objecting Non-Compliance with the Rule and Material Prejudice to the Accused, 19/06/2000.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0125, [Cyangugu] – Imanishimwe – Prosecutor's Brief in Reply to the Motion by Samuel Imanishimwe's Defence Objecting Non-Compliance with the Rule and Material Prejudice to the Accused, 19/06/2000.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0129, [Cyangugu] – Bagambiki – Ntagerura et al – Appendices to 1) the Indictments and Notice of Foreseeable Amendments to the Indictments 2) Prosecutors' Request to Admit Facts 3) List of Protection of Witnesses 4) Summary of Anticipated Witness, 03/07/2000.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0130, [Cyangugu] – Bagambiki – Ntagerura et al – The Prosecutor's Pre-Trial Brief, 03/07/2000.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0136, [Cyangugu] – Imanishimwe – Decision on Imanishimwe's Motion Objecting to Non-Compliance with the Rules and Material Prejudice to the Accused, 10/07/2000.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0136, [Cyangugu] – Imanishimwe – Decision on Defence Motion Objecting Non-Compliance with the Rules and Material Prejudice to the Accused, 10/07/2000.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0142, [Cyangugu] – Bagambiki – Ntagerura et al – Prosecutor's Brief in Reply to a Defence Response to a Motion for the Transfer of Detained Witnesses Pursuant to Rule 90 Bis, 19/07/2000.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0147, [Cyangugu] – Bagambiki – Ntagerura et al – Motion by the Accused Ntagerura for Rectification of an Error of Fact in Accordance with Rule 73 of RPE and Regarding the Decision of 26/06/2000 Rendered by Chamber III, 07/07/2000.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0148, [Cyangugu] – Bagambiki – Motion by Bagambiki's Defence Seeking Order for Protective Measures for Its Witnesses, 11/06/2000.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0148, [Cyangugu] – Bagambiki – Motion by Bagambiki's Defence Seeking order for Protective Measures for its Witnesses, 12/06/2000.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0153, [Cyangugu] – Ntagerura – Prosecutor's Brief in Response to the Motion by A. Ntagerura's Defence for Rectification of an Error of Fact, Pursuant to Rule 73 of the Tribunal's Rules of RPE of Rendered by Trial Chamber III, ICTR-99-46, 22/08/2000.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0154, [Cyangugu] – Bagambiki – Ntagerura et al – Decision on the Prosecutor's Motion for the Transfer of Detained Witnesses Pursuant to Rule 90 Bis, 23/08/2000.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0155, [Cyangugu] – Ntagerura – Prosecutor's Brief in Response to the Motion by A. Ntegarura's Defence for Rectification of an Error of Fact, Pursuant to Rule 73 of the Tribunal's Rules of RPE of 06/06/2000 Rendered by Chamber III, 03/08/2000.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0156, [Cyangugu] – Bagambiki – Prosecutor's Brief in Response to E. Bagambiki's Motion Seeking Orders for Protective Measure for Defence Witnesses, 03/08/2000.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0173, [Cyangugu] – Bagambiki – Decision on the Motion by E. Bagambiki's Defence Seeking Orders for Protective Measure for its Witnesses, 09/07/2000.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0174, *Decision on the Motion by the Accused Andre Ntagerura for Revocation of an Order, Pursuant To Rule 73 of the Rules of Procedure and Evidence, Regarding the Order Rendered on 23 August 2000 by Trial Chamber Iii and Additional Motion by the Accused Andre Ntagerura To the Motion for Revocation of an Order, Pursuant To Rule 73 of the Rules of Procedure and Evidence, Regarding the Order Rendered on 23 August 2000 by Trial Chamber III*, (ICTR-99-46-0612), 09/08/2000.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0183, *[Cyangugu] – Bagambiki – Ntagerura et al – Compliance with Trial Chamber III Order of 23/08/2000 (Attached Shortened List of Witnesses)*, 18/09/2000.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0183, *Compliance with Trial Chamber III Order of 23 August, 2000*, 18/09/2000.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0186, *[Cyangugu] – Bagambiki – Ntagerura et al – Submissions on Admitted Facts and Law*, 09/08/2000.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0187, *Prosecutor's Brief in Response to the Motion by the Accused, Andre Ntagerura, for Revocation of an Order, Pursuant to Rule 73 of the Rules of Procedure and Evidence, Regarding the Order rendered 23 August 2000 by Trial Chamber 4*, 04/09/2000.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0188, *Defence Motion for the Return of Documents and Other Personal and Family Effects Seized Sub-Rule 66 (B) of the Rules of Procedure and Evidence*, 09/09/2000.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0191, *[Cyangugu] – Bagambiki – Ntagerura et al – Prosecutor's Witness List*, 27/09/2000.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0191, [Cyangugu] – Bagambiki – Ntagerura et al – *Prosecutor's Witness List*, 27/09/2000.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0193, [Cyangugu] – Ntagerura – *Supplementary Motion by the Accused Andre Ntagerura To the Motion for Revocation of an Order Filed on 29 August, Pursuant to Rule 73 of the Rules of RPE, Regarding the Order Rendered on 23/08/2000, 31/08/2000.*

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0195, [Cyangugu] – Bagambiki – Ntagerura et al – *Pre-Trial Brief Filed by Andre Ntagerura's Defence in Compliance with the Order Rendered by Trial Chamber III On 23/08/2000 Pursuant to Rule 73 Bis (F) of the Rules of RPE*, 15/09/2000.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0195, [Cyangugu] – Bagambiki – Ntagerura et al – *Pre-Trial Brief Filed by Andre Ntagerura's Defence in Compliance with the Order Rendered by Trial Chamber III on 23/08/2000 Pursuant to Rule 73 Bis (F) of the Rules of RPE*, 15/09/2000.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0241, [Cyangugu] – Bagambiki – Ntagerura et al – *Application for Cross- Examination of Expert Witness Andre Guichaoua*, 07/12/2000.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0257, [Cyangugu] – Bagambiki – Ntagerura et al – *Directions on Resumption of Trial and Amicus Brief*, 20/04/2001.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0268, *Prosecutor's Response to Application for Leave to File an Amicus Brief*, 8/5/2001.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0270, [Cyangugu] – Imanishimwe – *Response of the Defence for Samuel Imanishimwe to Amicus Curiae Application Filed by the Ngo Coalition for Women's Human Rights in Conflict Situation*, 27/04/2001.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0271, [Cyangugu] – Bagambiki – Response by Emmanuel Bagambiki's Defence to the Amicus Curiae Brief Filed by the Ngo Coalition for Women's Human Rights in Conflict Situations, 02/05/2001.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0280, [Cyangugu] – Ntagerura – Response by the Defence for Andre Ntagerura To the Application Filed by the Ngo Coalition for Women's Human Rights in Conflict Situations Seeking Leave to File an Amicus Curiae Brief Pursuant to Rule 74 ..., 02/05/2001.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0287, [Cyangugu] – Bagambiki – Ntagerura et al – Decision on the Application to File an Amicus Curiae Brief According to Rule 74 of the Rules of Procedure and Evidence Filed on Behalf of the NGO Coalition for Women's Human Rights in Conflict Situations, 24/5/2001.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0287, [Cyangugu] – Bagambiki – Ntagerura et al – Decision on the Application to File an Amicus Curiae Brief According to Rule 74 of the Rules of Procedure and Evidence Filed on Behalf of the Ngo Coalition for Women's Human Rights in Conflict Situations, 24/05/2001.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0297, [Cyangugu] – Ntagerura – Response by the Defence to the Brief Filed by the Ngo Coalition for Women's Human Rights in Conflict Situations on the Need to Include Charges of Sexual Violence in Andre Ntagerura's Indictment, 03/05/2001.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0298, Request for Reconsideration of the Decision on Amicus Application to File an Amicus Curiae Brief According to Rule 74 Filed on Behalf of the Ngo Coalition for Women's Human Rights in Conflict Situations, 11/7/2001.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0300, [Cyangugu] – Bagambiki – Ntagerura et al – Request for Reconsideration of the Decision on Amicus Application to File an Amicus Curiae Brief

According to Rule 74 Filed on Behalf of the Ngo Coalition for Women's Human Rights in Conflict Situations, 11/07/2001.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0300, [Cyangugu] – Bagambiki – Ntagerura et al – Request for Reconsideration of the Decision on Amicus Application to File an Amicus Curiae Brief According to Rule 74 Filed on Behalf of the Ngo Coalition for Women's Human Rights in Conflict Situations, 11/07/2001.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0322, [Cyangugu] – Bagambiki – Ntagerura et al – Decision on Prosecutor's Extremely Urgent Application to Prolong the Stay of Witnesses Lap and Lai Pursuant to Rule 54, 10/09/2001.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0329, [Cyangugu] – Bagambiki – Ntagerura et al – Decision on the Coalition for Women's Human Rights in Conflict Situation's Motion for Reconsideration of the Decision on Application to File an Amicus Curiae Brief, 24/09/2001.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0331, [Cyangugu] – Ntagerura – Response by Andre Ntagerura's Defence to the Prosecutor's Extremely Urgent Motion to Prolong the Stay of Witnesses Lap and Lai Pursuant to Rule 54, 09/08/2001.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0336, [Cyangugu] – Bagambiki – Response by Emmanuel Bagambiki's Defence to the Prosecutor's Motion to Prolong the Stay of Witnesses Lap and Lai Pursuant to Rule 54 of the Rules of Procedure and Evidence, 07/09/2001.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0346, Motion by Emmanuel Bagambiki's Defence Seeking Disclosure by the Prosecutor of Confessions by Prosecution Witnesses Held in Detention, Namely LAB, LAG, LAH, LAI, LAJ, LAK, LAM, LAP and LAR Pursuant to Rule 73 of the Rules of Procedure and Evidence, 05/11/2001.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0362, Letter from the Defence Counsels to the Chambers, 20/09/2000.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0364, [Cyangugu] – Bagambiki – Ntagerura et al – Request for a Pre-Trial Conference to be held in the Presence of the Accused, 23/08/2000.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0365, Disclosure of Additional, Unredacted Statements, Names and Particulars of 56 Prosecution Witnesses, 11/09/2000.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0393, [Cyangugu] – Bagambiki – Ntagerura et al – Expert Report, 28/03/2001.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0421, [Cyangugu] – Imanishimwe – Prosecutor's Response to Motion for Acquittal Pursuant to Rule 98bis of the Rules of Procedure and Evidence Filed by the Defense for Samuel Imanishimwe, 06/02/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0424, [Cyangugu] – Imanishimwe – Prosecutor's Brief on Defence Motion for Acquittal Pursuant to Rule 98 Bis of the Rules of Procedure and Evidence Filed by the Defence for Samuel Imanishimwe, 27/02/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0429, [Cyangugu] – Bagambiki – Ntagerura et al – Prosecutor's Response to the Motion for Exclusion of Evidence Pursuant to Rules 5, 95 and 98 Bis of the Rules of Procedure and Evidence Filed by the Defence for Andre Ntagerura, 04/03/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0431, [Cyangugu] – Ntagerura – Imanishimwe – Separate and Concurring Decision of Judge Williams on Imanishimwe's Defence Motion for Judgement of Acquittal on Count of Conspiracy to Commit Genocide Pursuant to Rule 98 Bis, 13/03/2003.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0433, [Cyangugu] – Bagambiki – Ntagerura et al – Decision on Defence Motion to Exclude Evidence, 25/03/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0433, [Cyangugu] – Bagambiki – Ntagerura et al – *Decision on Defence Motion to Exclude Evidence*, 25/03/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0436, [Cyangugu] – Imanishimwe – *Defence Motion for the Acquittal of Samuel Imanishimwe on Defence Motion of Samuel Imanishimwe for the Acquittal on the Count of Conspiracy to Commit Genocide Pursuant to Rule 98 Bis of the RPE*, 22/01/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0438, [Cyangugu] – Bagambiki – Ntagerura et al – *Prosecutor's Response to Motion for Transmission of a Confidential Report by the Witness and Victim Support Section Following Allegations of Witness LAI Pursuant to Articles 19 and 20 of the Statute and Rules*, 09/04/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0439, [Cyangugu] – Bagambiki – Ntagerura et al – *Decision on Ntagerura's Extremely Urgent Motion for Order to Transfer an Accused from the Detention Facility in Order to Testify for the Defence, Pursuant to Rules 73 and 54 of the RPE*, 16/04/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0440, [Cyangugu] – Bagambiki – Ntagerura et al – *Motion Requesting Disclosure, Under Confidential Cover, of the Report by the Witnesses Protection Sections on the investigation into Allegations Made by Prosecution Witness LAI*, 30/03/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0442, [Cyangugu] – Bagambiki – Ntagerura et al – *Decision on Defence Motion to Obtain Confidential Report Concerning Allegations of Witness LAI (Articles 19 (1) and 20 (2))*, 24/04/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0443, [Cyangugu] – Bagambiki – Ntagerura et al – *Prosecutor's Response to Defence Request to Modify the List of Defence Witnesses Filed on 14/01/2002 Pursuant to Article 73(A) and 73 TER (E) of the Rules of Procedure and Evidence*, 29/04/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0444, *Ntagerura – Bagambiki – Imanishimwe – Urgent Motion for Leave to Amend the List of Defence Witnesses Filed on 14/01/2002, Pursuant to Rule 73 (A) and 73 TER (E)*, 23/04/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0446, *[Cyangugu] – Bagambiki – Ntagerura et al– Decision on Defence for Ntagerura's Motion to Amend its Witness List Pursuant to Rule 73 TER (E)*, 04/06/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0447, *[Cyangugu] – Bagambiki – Ntagerura et al – Prosecutor's Response to the Defence Motion for an Order Varying the Witness List Pursuant to Article 20.4(E) of the Statute and Rule 73 TER (E) and 89 C of the Rules of Procedure and Evidence*, 04/05/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0448, *[Cyangugu] – Ntagerura – Defence Response to the Prosecutors Response Filed 04/05/2002 in the Variation of the Witness List of Andre Ntagerura, Pursuant to Article 20. (E) of the Statute and Rules TER (E) and 89 (C) of the RPE*, 04/06/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0449, *[Cyangugu] – Ntagerura – Decision on Defence of Ntagerura's Motion to Vary Its Witness List Pursuant to Rule 73 TER (E)*, 11/06/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0454, *Ntagerura – Bagambiki – Imanishimwe – Prosecutor's Motion for the Exclusion of the Proposed Expert Reports and Evidence of Antoine Nyetera and Uwe Friesecke*, 26/06/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0455, *[Cyangugu] – Bagambiki – Ntagerura et al – Prosecutor's Motion for the Exclusion of the Proposed Expert Report and Evidence of Wayne Madsen*, 01/07/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0460, *[Cyangugu] – Bagambiki – Ntagerura et al – Prosecutor's*

Motion for the Exclusion of the Proposed Expert Report and Evidence of Lucien Hounkpatin, 03/07/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0486, C0102 – [Cyangugu] – Bagambiki – Ntagerura et al – Contact Between Andre Ntagerura and Defence Witnesses, 18/04/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0488, Proposed Reduction in the List of Defence Witnesses in the Cyangugu Case, Case No. ICTR-99-46-T, 30/04/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0495, [Cyangugu] – Bagambiki – Ntagerura et al – Proposed Reduction in the List of Defence Witnesses in the Cyangugu Case, Case ICTR-99-46-T, 30/05/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0549, [Cyangugu] – Bagambiki – Ntagerura et al – Decision on Bagambiki's Motion to Transfer an Accused from the ICTR Detention Facility to Testify for the Defence (Pursuant to Rules 73 and 54), 17/02/2003.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0549, [Cyangugu] – Ntagerura et al – Decision on Bagambiki's Motion to Transfer an Accused from the ICTR Detention Facility to Testify for the Defence (Pursuant to Rules 73 and 54), 17/02/2003.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0599/1, Trial Judgement – the Prosecutor V. André Ntagerura Emmanuel Bagambiki Samuel Imanishimwe, 25/02/2004.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-0615, [Cyangugu] – Decision on Bagambiki's and Ntagerura's Motion for Disclosure of Confessions of Detained Witnesses, 08/03/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-1703, [Cyangugu] – Bagambiki – Ntagerura et al – Defence Motion on Behalf of Andre Ntagerura for an Order Pursuant to Article 20. 4.(E) of the

Statute and Rules 73 TER (E) and 89(C) of the Rules Procedure and Evidence [Variation of the Witness List], 31/05/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, ICTR-99-46-1735/2, Cyangugu - Appeal Judgement, 07/07/2006.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, CONTRA002090, [Cyangugu] – Ntagerura et al – Redacted Transcript of 10/10/2000, 10/10/2000.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, CONTRA002092, [Cyangugu] – Ntagerura et al – Redacted Transcript of 11/10/2000, 11/10/2000.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, CONTRA002093, [Cyangugu] – Ntagerura et al – Redacted Transcript of 12/10/2000, 12/10/2000.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, CONTRA002094, [Cyangugu] – Ntagerura et al – Redacted Transcript of 13/10/2000, 13/10/2000.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, CONTRA002105, [Cyangugu] – Ntagerura et al – Redacted Transcript of 30/10/2000, 30/10/2000.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, CONTRA002106, [Cyangugu] – Ntagerura et al – Redacted Transcript of 31/10/2000, 31/10/2000.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, CONTRA002109, [Cyangugu] – Ntagerura et al – Redacted Transcript of 02/11/2000, 02/11/2000.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, CONTRA002110, ICTR-99-46, [Cyangugu] – Ntagerura et al – Redacted Transcript of 01/11/2000, 01/11/2000.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, CONTRA002285, [Cyangugu] – Ntagerura et al – Redacted Transcript of 18/01/2001, 18/01/2001.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, CONTRA002302, [Cyangugu] – Ntagerura et al – Redacted Transcript of 25/01/2001, 25/01/2001.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, CONTRA002339, [Cyangugu] – Ntagerura et al – Redacted Transcript of 12/02/2001, 12/02/2001.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, CONTRA002340, [Cyangugu] – Ntagerura et al – Redacted Transcript of 13/02/2001, 13/02/2001.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, CONTRA002676, [Cyangugu] – Ntagerura et al – Redacted Transcript of 24/05/2001, 24/05/2001.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, CONTRA002965, [Cyangugu] – Ntagerura et al – Redacted Transcript of 19/09/2001, 19/09/2001.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, CONTRA005827, [Cyangugu] – Ntagerura et al – Redacted Transcript of 29/01/2001, 29/01/2001.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, CONTRA014953, [Cyangugu] – Ntagerura et al – Redacted Transcript of 30/01/2001, 30/01/2001.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA000112/2, [Cyangugu] – Ntagerura et al – Redacted Transcript of 03/07/2000 – Motion, 03/07/2000.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA000122/01, [Cyangugu] – Ntagerura et al – Redacted Transcript of 09/10/2000, 09/10/2000.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA000124/01, [Cyangugu] – Ntagerura et al – Redacted Transcript of 10/10/2000, 10/10/2000.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA000126/02, [Cyangugu] – Ntagerura et al – Redacted Transcript of 23/10/2000, 23/10/2000.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA000129/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 26/10/2000, 26/10/2000.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA000130/01, [Cyangugu] – Ntagerura et al – Redacted Transcript of 20/11/2000, 20/11/2000.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA000131/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 21/11/2000, 21/11/2000.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA000132/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 23/11/2000, 23/11/2000.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA000206/01, [Cyangugu] – Ntagerura et al – Redacted Transcript of 07/06/2001, 07/06/2001.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA000207/01, [Cyangugu] – Ntagerura et al – Redacted Transcript of 18/09/2000, 18/09/2000.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA000209, [Cyangugu] – Ntagerura et al – Redacted Transcript of 20/09/2000, 20/09/2000.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA000217/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 24/10/2000, 24/10/2000.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA000218/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 25/10/2000, 25/10/2000.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA000221/1 [Cyangugu] – Ntagerura et al – Redacted Transcript of 19/01/2001, 19/01/2001.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA000240/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 22/11/2000, 22/11/2000.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA000247/2, [Cyangugu] – Ntagerura et al – Redacted Transcript of 28/11/2000, 28/11/2000.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA000250/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 17/01/2001, 17/01/2001.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA000251/2, [Cyangugu] – Ntagerura et al – Redacted Transcript of 18/01/2001, 18/01/2001.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA000252/2, [Cyangugu] – Ntagerura et al – Redacted Transcript of 22/01/2001, 22/01/2001.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA000253/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 23/01/2001, 23/01/2001.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA000254/2, [Cyangugu] – Ntagerura et al – Redacted Transcript of 24/01/2001, 24/01/2001.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA000258/2, [Cyangugu] – Ntagerura et al – Redacted Transcript of 31/01/2001, 31/01/2001.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA000279/01, [Cyangugu] – Ntagerura et al – Redacted Transcript of 29/11/2000, 29/11/2000.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA000324/2, [Cyangugu] – Ntagerura et al – Redacted Transcript of 04/03/2002 – Motion, 04/03/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA000380/2, [Cyangugu] – Ntagerura et al – Redacted Transcript of 01/02/2001, 01/02/2001.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA000396/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 23/05/2001, 23/05/2001.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA000397/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 24/05/2001, 24/05/2001.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA000398/2, [Cyangugu] – Ntagerura et al – Redacted Transcript of 22/05/2001, 22/05/2001.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA000399/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 21/05/2001, 21/05/2001.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA000403/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 26/09/2001, 26/09/2001.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA000404/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 11/09/2001, 11/09/2001.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA000405/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 17/05/2001, 17/05/2001.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA000406/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 16/05/2001, 16/05/2001.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA000407/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 15/05/2001, 15/05/2001.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA000409/2, [Cyangugu] – Ntagerura et al – Redacted Transcript of 07/05/2001, 07/05/2001.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA000433/2, [Cyangugu] – Ntagerura et al – Redacted Transcript of 14/02/2001 – Decision, 14/02/2001.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA000434/2, [Cyangugu] – Ntagerura et al – Redacted Transcript of 14/02/2001, 14/02/2001.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA000435/2, [Cyangugu] – Ntagerura et al – Redacted Transcript of 15/02/2001, 15/02/2001.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA000436/2, [Cyangugu] – Ntagerura et al – Redacted Transcript of 19/02/2001, 19/02/2001.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA000437/2, [Cyangugu] – Ntagerura et al – Redacted Transcript of 20/02/2001, 20/02/2001.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA000438/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 21/02/2001, 21/02/2001.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA000439/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 22/02/2001, 22/02/2001.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA000441/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 28/02/2001, 28/02/2001.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA000443/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 02/05/2001, 02/05/2001.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA000444/2, [Cyangugu] – Ntagerura et al – Redacted Transcript of 03/05/2001, 03/05/2001.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA000445/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 04/05/2001, 04/05/2001.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA000446/2, [Cyangugu] – Ntagerura et al – Redacted Transcript of 09/05/2001, 09/05/2001.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA000521/2, [Cyangugu] – Ntagerura et al – Redacted Transcript of 05/03/2002 – Motion, 05/03/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA000522/2, [Cyangugu] – Ntagerura et al – Redacted Transcript of 07/03/2002, 07/03/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA000522/2, [Cyangugu] – Ntagerura et al – Redacted Transcript of 07/03/2002, 07/03/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA000524/2, [Cyangugu] – Ntagerura et al – Redacted Transcript of 20/03/2002, 20/03/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA000525/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 19/03/2002, 19/03/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA000526/2, [Cyangugu] – Ntagerura et al – Redacted Transcript of 12/03/2002, 12/03/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA000527/2, [Cyangugu] – Ntagerura et al – Redacted Transcript of 13/03/2002, 13/03/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA000528/2, [Cyangugu] – Ntagerura et al – Redacted Transcript of 11/03/2002, 11/03/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA000532/2, [Cyangugu] – Ntagerura et al – Redacted Transcript of 14/03/2002, 14/03/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA000533/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 14/05/2001, 14/05/2001.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA000534, [Cyangugu] – Ntagerura et al – Redacted Transcript of 04/06/2001, 04/06/2001.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA000537/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 10/09/2001, 10/09/2001.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA000540, [Cyangugu] – Ntagerura et al – Redacted Transcript of 13/09/2001, 13/09/2001.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA000541/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 17/09/2001, 17/09/2001.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA000542/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 18/09/2001, 18/09/2001.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA000543/01, [Cyangugu] – *Ntagerura et al* – Redacted Transcript of 19/09/2001, 19/09/2001.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA000544/1, [Cyangugu] – *Ntagerura et al* – Redacted Transcript of 21/11/2001 – Decision, 21/11/2001.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA000546/2, [Cyangugu] – *Ntagerura et al* – Redacted Transcript of 20/09/2001, 20/09/2001.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA000552/2, [Cyangugu] – *Ntagerura et al* – Redacted Transcript of 06/03/2002, 06/03/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA000552/2, [Cyangugu] – *Ntagerura et al* – Redacted Transcript of 06/03/2002– Oral Hearing on the Motion of Imanishimwe for Acquittal on Conspiracy Count, 06/03/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA000750/01, [Cyangugu] – *Ntagerura et al* – Redacted Transcript of 06/06/2001, 06/06/2001.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA000751/01, [Cyangugu] – *Ntagerura et al* – Redacted Transcript of 25/09/2001, 25/09/2001.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA000873/2, [Cyangugu] – *Ntagerura et al* – Redacted Transcript of 18/03/2002, 18/03/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA001270/2, [Cyangugu] – *Ntagerura et al* – Redacted Transcript of 14/05/2002, 14/05/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA001271/2, [Cyangugu] – Ntagerura et al – Redacted Transcript of 16/05/2002, 16/05/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA001272/2, [Cyangugu] – Ntagerura et al – Redacted Transcript of 17/05/2002, 17/05/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA001273/2, [Cyangugu] – Ntagerura et al – Redacted Transcript of 23/07/2002, 23/07/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA001274/2 [Cyangugu] – Ntagerura et al – Redacted Transcript of 20/05/2002, 20/05/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA001275/2, [Cyangugu] – Ntagerura et al – Redacted Transcript of 21/05/2002, 21/05/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA001276/2, [Cyangugu] – Ntagerura et al – Redacted Transcript of 22/05/2002, 22/05/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA001277/2, [Cyangugu] – Ntagerura et al – Redacted Transcript of 28/05/2002, 28/05/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA001278/2, [Cyangugu] – Ntagerura et al – Redacted Transcript of 29/05/2002, 29/05/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA001281/2, [Cyangugu] – Ntagerura et al – Redacted Transcript of 01/07/2002, 01/07/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA001282/2, [Cyangugu] – Ntagerura et al – Redacted Transcript of 02/07/2002, 02/07/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA001283/2, [Cyangugu] – Ntagerura et al – Redacted Transcript of 03/07/2002 – Motion, 03/07/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA001284/2, [Cyangugu] – Ntagerura et al – Redacted Transcript of 04/07/2002 – Decision, 04/07/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA001286/2, [Cyangugu] – Ntagerura et al – Redacted Transcript of 08/07/2002 – Motion, 08/07/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA001287/2, [Cyangugu] – Ntagerura et al – Redacted Transcript of 09/07/2002 – Decision, 09/07/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA001288/2, [Cyangugu] – Ntagerura et al – Redacted Transcript of 11/07/2002, 11/07/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA001289/2, [Cyangugu] – Ntagerura et al – Redacted Transcript of 15/07/2002, 15/07/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA001290/2, [Cyangugu] – Ntagerura et al – Redacted Transcript of 16/07/2002, 16/07/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA001291/2, [Cyangugu] – Ntagerura et al – Redacted Transcript of 17/07/2002, 17/07/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA001292/2, [Cyangugu] – Ntagerura et al – Redacted Transcript of 18/07/2002, 18/07/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA001293/2, [Cyangugu] – Ntagerura et al – Redacted Transcript of 22/07/2002, 22/07/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA001460/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 26/05/2000 – Motion, 26/05/2000.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA001599/2, [Cyangugu] – Ntagerura et al – Redacted Transcript of 25/07/2002, 25/07/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA001600/2, [Cyangugu] – Ntagerura et al – Redacted Transcript of 24/07/2002, 24/07/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA001601/2, [Cyangugu] – Ntagerura et al – Redacted Transcript of 28/03/2002, 28/03/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA001602/2, [Cyangugu] – Ntagerura et al – Redacted Transcript of 27/03/2002, 27/03/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA001610/2, [Cyangugu] – Ntagerura et al – Redacted Transcript of 21/03/2002, 21/03/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA001614/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 22/03/2002, 22/03/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA001615/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 25/03/2002, 25/03/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA001616/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 26/03/2002, 26/03/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA001618/02, [Cyangugu] – Ntagerura et al – Redacted Transcript of 02/10/2002, 02/10/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA001619/2, [Cyangugu] – Ntagerura et al – Redacted Transcript of 03/10/2002, 03/10/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA001620/2, [Cyangugu] – Ntagerura et al – Redacted Transcript of 07/10/2002, 07/10/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA001621/2, [Cyangugu] – Ntagerura et al – Redacted Transcript of 08/10/2002, 08/10/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA001622/2, [Cyangugu] – Ntagerura et al – Redacted Transcript of 09/10/2002, 09/10/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA001623/2, [Cyangugu] – Ntagerura et al – Redacted Transcript of 10/10/2002, 10/10/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA001774/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 24/09/2001, 24/09/2001.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA001775/2, [Cyangugu] – Ntagerura et al – Redacted Transcript of 21/09/2001, 21/09/2001.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA001780/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 14/10/2002, 14/10/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA001781/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 15/10/2002, 15/10/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA001782/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 16/10/2002, 16/10/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA001783/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 30/09/2002, 30/09/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA001785/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 01/10/2002, 01/10/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA001793/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 17/10/2002, 17/10/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA001794/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 21/10/2002, 21/10/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA001795/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 22/10/2002, 22/10/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA001796/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 23/10/2002, 23/10/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA001797/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 24/10/2002, 24/10/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA001798/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 28/10/2002, 28/10/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA001799/1 [Cyangugu] – Ntagerura et al – Redacted Transcript of 30/10/2002, 30/10/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA001800/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 04/11/2002, 04/11/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA001801/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 05/11/2002, 05/11/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA001802/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 06/11/2002, 06/11/2002.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA001851/2, [Cyangugu] – Ntagerura et al – Redacted Transcript of 20/01/2003, 20/01/2003.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA001907, [Cyangugu] – Ntagerura et al – Redacted Transcript of 21/01/2003, 21/01/2003.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA001908/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 20/02/2003, 20/02/2003.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA001909/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 24/02/2003, 24/02/2003.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA001910/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 25/02/2003, 25/02/2003.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA001911/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 10/03/2003, 10/03/2003.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA001912/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 11/03/2003, 11/03/2003.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA001913, [Cyangugu] – Ntagerura et al – Redacted Transcript of 12/03/2003, 12/03/2003.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA001914/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 17/03/2003, 17/03/2003.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA001915/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 24/03/2003, 24/03/2003.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA001916/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 25/03/2003, 25/03/2003.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA001918/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 27/03/2003, 27/03/2003.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA001919/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 31/03/2003, 31/03/2003.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA001920/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 01/04/2003, 01/04/2003.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA001921/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 02/04/2003, 02/04/2003.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA001922/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 03/04/2003, 03/04/2003.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA001993/2, [Cyangugu] – Ntagerura et al – Redacted Transcript of 22/01/2003, 22/01/2003.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA001998/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 05/02/2003, 05/02/2003.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA001999/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 10/02/2003, 10/02/2003.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA002000/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 11/02/2003, 11/02/2003.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA002001/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 13/02/2003, 13/02/2003.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA002002/2, [Cyangugu] – Ntagerura et al – Redacted Transcript of 17/02/2003, 17/02/2003.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA002003/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 18/02/2003, 18/02/2003.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA002053/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 11/08/2003, 11/08/2003.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA002063/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 13/08/2003, 13/08/2003.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA002064/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 14/08/2003, 14/08/2003.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA002065/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 15/08/2003, 15/08/2003.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA002066/1, [Cyangugu] – Ntagerura et al – Redacted Transcript of 12/08/2003, 12/08/2003.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA002090/2, [Cyangugu] – *Ntagerura et al* – Redacted Transcript of 26/03/2003, 26/03/2003.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA002112/2, [Cyangugu] – *Ntagerura et al* – Redacted Transcript of 19/02/2003, 19/02/2003.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA002303/2, [Cyangugu] – *Ntagerura et al* – Redacted Transcript of 26/02/2004 - Decision, 26/02/2004.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA002960, [Cyangugu] – *Ntagerura et al* – Redacted Transcript of 06/02/2006 – Appeals Hearing, 06/02/2006.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA002962, [Cyangugu] – *Ntagerura et al* – Redacted Transcript of 07/02/2006 – Appeals Hearing, 07/02/2006

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA002964, [Cyangugu] – *Ntagerura et al* – Redacted Transcript of 08/02/2006 – Appeals Judgement, 08/02/2006.

Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46, TRA003809/1, [Cyangugu] – *Ntagerura et al* – Redacted Transcript of 07/07/2006 – Appeals Judgement, 07/07/2006.

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Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, CONTRA018137, *Gatete* – Redacted Transcript 04/11/2009, 04/11/2009.

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, CONTRA018674, *Gatete*, Redacted Transcript of 02/03/2010, 02/03/2010.

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, CONTRA018748, Gatete, *Redacted Transcript of 11/3/2010*, 11/03/2010.

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, CONTRA018865, *Gatete – Redacted Transcript 25/03/2010*, 25/03/2010.

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, CONTRA021639, *Gatete – Transcript of 07/05/2012 – Appeals Hearing*, 07/05/2012.

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, ICTR ICTR-00-61-0009, *Gatete – Initial Appearance of Accused (Pursuant to RR 62)*, 17/09/2002.

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, ICTR-00-61-0014, *Gatete – Prosecutor's Motion for Protective Measures for Victims and Witnesses (Pursuant to Art. 21, RR 54, 69, 73, and 75)*, 14/03/2003.

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, ICTR-00-61-0022, *Gatete – Prosecutor's Response to the Defense Preliminary Motion Challenging Defects in the form of the indictment Pursuant to Rule 72*, 09/05/2003.

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, ICTR-00-61-0023, *Gatete – Extremely Urgent Defence Motion Seeking Leave to File Preliminary Motions, Out of Time, Under Rule 72 of the Rules of Procedure and Evidence*, 08/04/2003.

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, ICTR-00-61-0025, *Gatete – Defence Preliminary Motions, Under Rule 72 of the Rules of Procedure and Evidence*, 12/04/2003.

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, ICTR-00-61-0028, *Gatete – Decision on Prosecution Request for Protection of Witnesses*, 11/02/2004.

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, ICTR-00-61-0029, *Gatete, Decision on Defence Preliminary Motion*, 29/03/2004.

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, ICTR-00-61-0035, *Gatete – Decision on the Prosecution's Request for Leave to File an Amended indictment*, 21/04/2005.

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, ICTR-00-61-0036/1, *Gatete – Amended indictment, ICTR-00-61*, 10/05/2005.

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, ICTR-00-61-0043/1, *Gatete – Decision on Defence Motion for Protection of Witnesses*, 10/04/2007.

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, ICTR-00-61-0046, *Gatete – Request by Ibuka and Avega for Leave to Appear and Make Submissions as Amicus (Pursuant to Rule 74 of the Tribunal's Rules of Procedure and Evidence) in Support of the Prosecutor's Rule 11 Bis Request for the Referral of the Case of Gatete...*, 09/01/2008.

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, ICTR-00-61-0047/1, *Gatete – Prosecutor's Response to the "Request by Ibuka & Avega for Leave to Appear and Make Submissions as Amicus (Pursuant to Rule 74 of the Tribunal's Rules of Procedure and Evidence) in Support of the Prosecutor's Rule 11 Bis Request for Referral...*, 08/02/2008.

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, ICTR-00-61-0048/2, *Gatete – Defence Reply to the Motion Entitled: Prosecutor's Request for the Referral of the Case of Jean-Baptiste Gatete to Rwanda Pursuant to Rule 11 Bis of the Tribunal's Rules of Procedure and Evidence*, 26/02/2008.

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, ICTR-00-61-0059/1, *Gatete – Decision on Amicus Curiae Requests (Ibuka, Avega and Icdaa) Rule 74 of the Rules of Procedure and Evidence*, 30/06/2008.

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, ICTR-00-61-0066, *Gatete – Amicus Curiae Brief on Behalf of the Republic of Rwanda*, 23/09/2008.

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, ICTR-00-61-0068/1, *Gatete – Decision on Prosecutor's Request for Referral to the Republic of Rwanda*, 17/11/2008.

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, ICTR-00-61-0069, *Gatete – Defence Preliminary Motion Alleging Defects in the form of the Amended indictment*, 22/05/2009.

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, ICTR-00-61-0070, *Gatete – Prosecutor's Response to the Defence Preliminary Motion Alleging Defects in the form of the Amended indictment*, 27/05/2009.

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, ICTR-00-61-0073, *Gatete – Decision on Defence Motion Concerning Defects in the Amended indictment*, 03/07/2009.

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, ICTR-00-61-0074/1, *Gatete – the Prosecutor's Submission Complying with the Decision on Defence Motion Concerning Defects in the Amended Indictment Dated 3 July 2009*, 07/07/2009.

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, ICTR-00-61-0076, *Gatete – Prosecutor's Request to Admit Facts (Pursuant to Rule 73bis (B)(II))*, 10/07/2009.

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, ICTR-00-61-0078, *Gatete – Defence Response to Prosecution's Request to Admit Facts*, 15/07/2009.

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, ICTR-00-61-0079, *Gatete – Prosecutor's Pre-Trial Brief (Pursuant to Rule 73bis (B) of the Rules of Procedure and Evidence)*, 21/07/2009.

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, ICTR-00-61-0080, *Gatete – Prosecutor's Motion for Judicial Notice Pursuant to Rule 94 of the Rules of Procedure and Evidence*, 03/08/2009.

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, ICTR-00-61-0081, *Gatete – Defence Response to Prosecution Motion for Judicial Notice of Facts of Common Knowledge*, 07/08/2009.

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, ICTR-00-61-0084, *Gatete – Decision on Defence Application for Certification to Appeal the Chamber's Decision on Defects in the indictment*, 19/08/2009.

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, ICTR-00-61-0086/1, *Gatete – Decision on Prosecution's Motion for Judicial Notice of Facts of Common Knowledge*, 21/08/2009.

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, ICTR-00-61-0088, *Gatete – Defence Motion Raising Defects in the Prosecution Pre-Trial Brief of 19 August 2009*, 03/09/2009.

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, ICTR-00-61-0088, *Gatete – Defence Motion Raising Defects in the Prosecution Pre-Trial Brief of 19 August 2009*, 30/09/2009.

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, ICTR-00-61-0091, *Gatete – Prosecutor's Response to "Defence Motion Raising Defects in the Prosecution Pre-Trial Brief of 19 August 2009"*, 08/09/2009.

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, ICTR-00-61-010, *Gatete, Motion on Admissibility of Allegations Outside the Temporal Jurisdiction of the Tribunal*, 15/10/2009.

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, ICTR-00-61-0100, *Gatete, Decision on Defence Motion Raising Defects in the Prosecution Pre-Trial Brief of 19 August 2009*, 02/10/2009.

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, ICTR-00-61-0104/1, *Gatete – Decision on Defence Motions for Disclosure Pursuant to Rule 66 (A)(II) and Commencement of Trial*, 13/10/2009.

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, ICTR-00-61-0115, *Gatete – Prosecutor's Reply to "Defence Motion on Prosecution Disclosure and Commencement of the Trial" and Motion for Reconsideration of Decision of 13 October 2009*, 16/10/2009.

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, ICTR-00-61-0116, *Gatete – Decision on Prosecutor's Motion to Vary List of Witnesses Pursuant to Rule 73BIS(E) of the Rules of Procedure and Evidence*, 19/10/2009.

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, ICTR-00-61-0128, *Gatete – Motion for Exclusion of Evidence*, 30/10/2009.

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, ICTR-00-61-0131, *Gatete – Motion for Disclosure of Rwandan Judicial Records Pursuant to Rule 66 (A) (ii) of the Rules of Procedure and Evidence*, 02/11/2009.

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, ICTR-00-61-0133, *Gatete – Decision on Defence Motion on Admissibility of Allegations Outside the Temporal Jurisdiction of the Tribunal*, 03/11/2009.

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, ICTR-00-61-0149, *Gatete – Decision on Defence Motion for Disclosure of Rwandan Judicial Records Pursuant to Rule 66(A) (II) and Order to the Prosecution to Obtain Documents. Rules 54, 66 and 98 of the Rules of Procedure and Evidence*, 23/11/2009.

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, ICTR-00-61-0151, *Gatete – Decision on Defence Motion for Exclusion of Evidence (Rule 89 (C) of R.P.E., 24/11/2009.*

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, ICTR-00-61-0155, *Gatete – Report on the Results of the Enquiries with the Rwandan Authorities Made by the Prosecutor in Respect of Witnesses BBQ, BVR and BVQ*, 01/12/2009.

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, ICTR-00-61-0160, *Gatete – Decision on Defence Motion to Admit MFI3 into Evidence Pursuant to Rule 89 (C) of the Rules of Procedure and Evidence*, 15/12/2009.

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, ICTR-00-61-0161, *Gatete – Decision on Prosecution Motion for the Disclosure of the Particulars of the Accused's Alibi*, 18/12/2009.

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, ICTR-00-61-0162, *Gatete – Motion for Exclusion of Evidence and Delineation of Defence Case*, 20/01/2010.

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, ICTR-00-61-0164, *Gatete – Prosecutor's Response to the Defence Motion for Exclusion of Evidence and Delineation of the Defence Case*, 25/01/2010.

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, ICTR-00-61-0166/1, *Gatete – the Pre-Defence Brief of Jean-Baptiste Gatete*, 29/01/2010.

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, ICTR-00-61-0170, *Gatete – Scheduling Order and Order for the Defence to Reduce its List of Witnesses Rule 54 and 73TER (D) of the R.P.E., 02/02/2010.*

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, ICTR-00-61-0172, *Gatete – Prosecutor's Motion to Make the Trial Record Conform to the Evidence*, 03/02/2010.

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, ICTR-00-61-0188, *Gatete, Decision on Defence Motion for Exclusion of Evidence and Delineation of the Defence Case*, 26/03/2010.

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, ICTR-00-61-0198/2, *Gatete – Decision on Defence Motion for Confidentiality of information*, 16/06/2010.

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, ICTR-00-61-0199, *Gatete – Decision on Site Visit to Rwanda (Rule 4 and 54 of R.P.E.)*, 17/06/2010.

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, ICTR-00-61-0202, *Gatete – Prosecution Motion to Admit Statements in Reply to Defence Motion for the Admission into Evidence of Statements*, 18/06/2010.

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, ICTR-00-61-0207/1, ICTR-00-61, *Gatete – Decision on Defence and Prosecution Motions for Admission of Written Statements and Defence Motion to Postpone Filing of Closing Briefs (Rule 73 Bis, 74ter, 89(C) and 92bis of R.P.E.)*, 24/06/2010.

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, ICTR-00-61-0209/2, *Gatete – Modified Confidential annex of the Submissions on the Site Visit of 30 April 2010*, 28/06/2010.

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, ICTR-00-61-0221, *Gatete – Decision on Defence Application for Reconsideration or Certification to Appeal the Decision of 24 June 2010*, 14/07/2010.

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, ICTR-00-61-0235/1, *Gatete – Decision on Defence Motion to Strike Portions of the Prosecution Closing Brief (Rule 54 and 73 of the R.P.E.)*, 30/09/2010.

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, ICTR-00-61-0240/1, *Gatete – Judgement and Sentence*, 31/03/2011.

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, ICTR-00-61-0246/1, *Gatete – Notice of Appeal*, 03/05/2011.

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, ICTR-00-61-0247/1, *Gatete – Prosecution's Notice of Appeal*, 03/05/2011.

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, ICTR-00-61-0265/1, *Gatete – Prosecution's Appellant's Brief*, 18/07/2011.

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, ICTR-00-61-0277, *Gatete – Appellant's Brief Public Version*, 02/11/2011.

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, ICTR-00-61-0280, *Gatete–Prosecution's Brief in Reply*, 21/11/2011.

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, TRA001643/1, *Gatete – Redacted Transcript of 20/10/2009*, 20/10/2009.

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, TRA005145/1, *Gatete – Redacted Transcript of 10/3/2010*, 10/03/2010.

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, TRA005147/1, *Gatete – Redacted Transcript of 09/03/2010*, 09/03/2010.

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, TRA005148/1, *Gatete – Redacted Transcript of 03/03/2010*, 03/03/2010.

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, TRA005150/1, *Gatete – Redacted Transcript of 04/03/2010*, 04/03/2010.

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, TRA005151/1, *Gatete – Redacted Transcript of 05/03/2010*, 05/03/2010.

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, TRA005152/1, *Gatete – Redacted Transcript of 08/03/2010*, 08/03/2010.

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, TRA005153/1, *Gatete – Redacted Transcript of 16/03/2010*, 16/03/2010.

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, TRA005154/1, *Gatete – Redacted Transcript of 15/03/2010*, 15/03/2010.

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, TRA005157/1, *Gatete – Redacted Transcript of 22/3/2010*, 22/03/2010.

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, TRA005158/1, *Gatete – Redacted Transcript of 17/03/2010*, 17/03/2010.

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, TRA005160/1, *Gatete – Redacted Transcript of 23/3/2010*, 23/03/2010.

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, TRA005161/1, *Gatete – Redacted Transcript of 24/03/2010*, 24/03/2010.

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, TRA005163/2, *Gatete – Redacted Transcript of 29/03/2010, 29/03/2010.*

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, TRA005293/2, *Gatete – Redacted Transcript of 23/02/2010, 23/02/2010.*

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, TRA005458, *Gatete – Redacted Transcript of 22/10/2009, 22/10/2009.*

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, TRA005459, *Gatete – Redacted Transcript of 05/11/2009, 05/11/2009.*

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, TRA005460, *Gatete – Redacted Transcript of 16/11/2009, 16/11/2009.*

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, TRA005461, *Gatete – Redacted Transcript of 13/11/2009, 13/11/2009.*

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, TRA005490/2, *Gatete – Redacted Transcript of 21/10/2009, 21/10/2009.*

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, TRA005491/2, *Gatete – Redacted Transcript of 03/11/2009, 03/11/2009.*

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, TRA005492/2, *Gatete – Redacted Transcript of 09/11/2009, 09/11/2009.*

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, TRA005505/2, *Gatete – Redacted Transcript of 14/10/2009, 14/10/2009.*

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, TRA005506/2, *Gatete, Redacted Transcript of 02/11/2009, 02/11/2009.*

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, TRA005507/2, *Gatete – Redacted Transcript of 10/11/2009, 10/11/2009.*

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, TRA005537/2, *Gatete – Redacted Transcript of 12/11/2009, 12/11/2009.*

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, TRA005592, *Gatete – Redacted Transcript of 08/11/2010, 08/11/2010.*

Prosecutor v. Jean Baptiste Gatete, Case No. ICTR-00-61, TRA005726/2, *Gatete – Transcript of 09/10/2012 – Judgement on Appeal*, 09/10/2012.

Other ICTR Documents

ICTR Legacy Symposium – 20 Years of Challenging Impunity, Arusha, Tanzania, 06/11/2014–07/11/2014.

OTP ICTR, 'Prosecution of Sexual Violence: Best Practices Manual for the Investigation and Prosecution of Sexual Violence Crimes in Post-conflict Regions: Lessons Learned from the Office of the Prosecutor for the International Criminal Tribunal for Rwanda', (2014), at www.unmict.org, (last accessed 01/08/2017).

Prosecutor v Clément Kayishema and Obed Ruzindana, Case No. ICTR-95-01, ICTR-95-01-1108/1, *Judgement and Sentence*, 21/05/1999.

Prosecutor v Grégoire Ndahimana, Case No. ICTR-01-68, *Trial Judgement*, 30/12/2001, at: unictr.unmict.org (last accessed 15/07/2017).

Prosecutor v. Alfred Musema, Case No. ICTR-96-13, *Judgement and Sentence*, 27/01/2000, at: <http://unictr.unmict.org> (last accessed 15/07/2017).

Prosecutor v. Augustin Bizimungu, Augustin Nindiliyimana, François-Xavier Nzuwonemeye and Innocent Sagahutu, Case No. ICTR-00-56, ICTR-00-56-1123/1, *Judgement and Sentence*, 17/05/2011.

Prosecutor v. Casimir Bizimungu, Jérôme Bicaumupaka, Justin Mugenzi and Prosper Mugiraneza, Case No. ICTR-99-50, ICTR-99-50-2143/1, *Judgement and Sentence*, 30/09/2011.

Prosecutor v. Édouard Karemera and Matthieu Ngirumpatse, Case No. ICTR-98-44, ICTR-98-44-4803/1, *Judgement and Sentence*, 02/02/2012.

Prosecutor v. Édouard Karemera, Matthieu Ngirumpatse and Joseph Nzirorera (Government I), Case No. ICTR-98-44, ICTR-98-44-2076/1, [*Government I*] – *Karemera et al – Decision on Prosecution Motion for Judicial Notice*, 09/11/2005.

Prosecutor v. Édouard Karemera, Matthieu Ngirumpatse and Joseph Nzirodera (Government 1), Case No. ICTR-98-44, ICTR-98-44-2411/1, [Government 1] – Karemera et al – Decision on Prosecutor's Interlocutory Appeal of Decision on Judicial Notice, 16/06/2006.

Prosecutor v. Emmanuel Rukundo, Case No. ICTR-01-70, ICTR-01-70-0393, *Judgement and Sentence*, 27/02/2009.

Prosecutor v. Emmanuel Rukundo, Case No. ICTR-01-70, ICTR-01-70-0400/1, *Appeals Judgement*, 20/10/2010.

Prosecutor v. Ferdinand Nahimana, Jean Bosco Barayagwiza and Hassan Ngeze, Case No. ICTR-99-52, ICTR-99-52-1323/1, *Judgement and Sentence*, 03/12/2003.

Prosecutor v. François Karera, Case No. ICTR-01-74, ICTR-01-74-0141/1, *Judgement and Sentence*, 07/12/2007.

Prosecutor v. Ildéphonse Nizeyimana, Case No. ICTR-00-55, ICTR-00-55C-0536/1, *Judgement and Sentence*, 19/06/2012.

Prosecutor v. Jean Uwikingi, Case No. ICTR-01-75, ICTR-01-75-AR11bis, *Uwikingi – Decision on Uwikingi's Appeal Against the Referral of His Case to Rwanda and Related Motions*, 16/12/2011.

Prosecutor v. Juvénal Kajelijeli, Case No. ICTR-98-44, ICTR-98-44A-0320/1, *Judgment and Sentence*, 01/12/2003.

Prosecutor v. Laurent Semanza, Case No. ICTR-97-20, ICTR-97-20-0779/1, *Judgement and Sentence*, 15/05/2003.

Prosecutor v. Pauline Nyiramasuhuko, Joseph Ndayambaje, Sylvain Nsabimana, Arsène Shalom Ntahobali, and Alphonse Nteziryayo (Butare), Case No. ICTR-98-42, ICTR-98-42-A15bis, *Decision in the Matter of Proceedings under Rule 15bis(D) – Dissenting Opinion of Judge Hunt*, 24/09/2003.

Prosecutor v. Pauline Nyiramasuhuko, Joseph Ndayambaje, Sylvain Nsabimana, Arsène Shalom Ntahobali, and Alphonse Nteziryayo (Butare), Case No. ICTR-98-42, *Judgement and Sentence*, 24/06/2011, at: unictr.unmict.org (last accessed 15/07/2017).

Prosecutor v. Siméon Nchamihigo, Case No. ICTR-01-63, ICTR-01-63-0080/1, *Judgement and Sentence*, 12/11/2008.

Prosecutor v. Théoneste Bagosora, Gratien Kabiligi, Anatole Nsengiyumva and Aloys Ntabakuze (Military I), Appeal Judgement, 14/12/2011.

Prosecutor v. Yussuf Munyakazi, Case No. ICTR-97-36, ICTR-97-36A-0142/1, *Munyakazi – Judgement and Sentence*, 05/07/2010.

*UN Archival Documents*²

United Nations General Assembly

A/47/277-S/24111, *An Agenda for Peace: Preventative Diplomacy, Peacemaking and Peace-Keeping: Report of the Secretary-General Pursuant to the Statement Adopted by the Summit Meeting of the Security Council on 21 January 1992*, 17/06/1992.

A/48/935, *Development and International Economic Cooperation: An Agenda for Development: Report of the Secretary-General*, 06/05/1994.

A/48/PV.93, 48th Session, 93rd Meeting, 14/04/1994.

A/49/516, *Strengthening of the Coordination of Humanitarian and Disaster Relief Assistance of the United Nations, including Special Economic Assistance: Special Economic Assistance to individual Countries or Regions: Emergency Assistance for the Socio-Economic Rehabilitation of Rwanda*, 14/10/1994.

A/49/PV.21, 49th Session, 21st Meeting, 06/10/1994.

A/50/60 – S/1995/1, *Supplement to an Agenda for Peace: Position Paper of the Secretary-General on the Occasion of the Fiftieth anniversary of the United Nations*, 25/01/1995.

A/51/7/Add.8, *Financing of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other such Violations Committed in the Territory of Neighbouring States Between 1 January and 31 December 1994: Ninth Report of the Advisory Committee on Administrative and Budgetary Questions*, 29/05/1997.

A/51/789, *Financing of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law*

² These records are grouped according to which organ of the UN produced the records.

Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States Between 1 January and 31 December 1994: Report of the Secretary-General on the Activities of the office of internal Oversight Services, 06/02/1997.

A/51/PV.15, 51st Session: 15th Plenary Meeting, 30/09/1996.

A/51/PV.78, 51st Session: 78th Plenary Meeting, 10/12/1996.

A/52/568, Strengthening of the Coordination of Humanitarian and Disaster Relief Assistance of the United Nations, including Special Economic Assistance: Special Economic Assistance to individual Countries or Regions: International Assistance to Rwanda for the Reintegration of Returning Refugees, the Restoration of total Peace, Reconstruction and Socio- Economic Development: Report of the Secretary-General, 05/11/1997.

A/52/582-S/1997/868, Report of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994, 13/11/1997.

A/52/784, Financing of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994: Report of the Secretary-General on the activities of the office of internal Oversight Services, 06/02/1998.

A/52/871, The Causes of Conflict and the Promotion of Durable Peace and Sustainable Development in Africa: Report of the Secretary-General, 13/04/1998.

A/53/367, Human Rights Field Operation in Rwanda: Report of the United Nations High Commissioner for Human Rights on the Human Rights Field Operation in Rwanda, 11/09/1998.

A/53/429, Report of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and

Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994, 23/09/1998.

A/53/659, *Report of the Advisory Committee on Administrative and Budgetary Questions*, 11/11/1998.

A/53/PV.12, 53rd Session: 12th Plenary Meeting, 23/09.1998.

A/53/PV.26, 53rd Session: 26th Meeting, 02/10/1998.

A/53/PV.47, 53rd Session: 47th Plenary Meeting, 28/10/1998.

A/53/PV.77, 53rd Session: 77th plenary meeting, 02/12/1998.

A/54/315-S/1999/943, *Report of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States Between 1 January and 31 December 1994*, 07/09/1999.

A/54/521, *Financing the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994: Report by the Secretary General*, 13/11/1999.

A/54/634, *Financing the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994: Report of the Expert Group to Conduct a Review of the Effective Operation and Functioning of the International Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda*, 22/11/1999.

A/54/PV.48, 54th Session: 48th Plenary Meeting, 08/11/1999.

A/55/269, *Situation of Human Rights in Rwanda: Report of the Special Representative of the Commission on Human Rights on the situation of human Rights in Rwanda*, 04/08/2000.

A/55/435 – S/2000/927, Report of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States Between 1 January and 31 December 1994, 02/10/2000.

A/55/512, Financing the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994: Report by the Secretary General, 23/10/2000.

A/55/759, Financing the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994: Report of the office of internal Oversight Services on the investigation into Possible Fee–Splitting Arrangements between Defence Counsel and indigent Detainees at the International Criminal Tribunal for Rwanda and the International Tribunal for the former Yugoslavia, 01/02/2001.

A/56/836, Report of the Secretary–General on the activities of the office of internal Oversight Services: Financing of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991: Financing of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994: Follow–up investigation into possible fee–splitting arrangements between defence counsel and indigent detainees at the International Tribunal for Rwanda and the International Tribunal for the former Yugoslavia, 26/02/2002.

A/56/853, Financing of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991: Financing of the International Criminal

Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994: Comprehensive report on the results of the implementation of the recommendations of the Expert Group to Conduct a Review of the Effective Operation and Functioning of the International Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda, 04/03/2002.

A/57/PV.36, 57th Session: 36th Plenary Meeting, 28/10/2002.

A/58/140–S/2003/707, *Report of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994*, 11/07/2003.

A/59/183–S/2004/601, *Report of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994*, 27/07/2004.

A/60/229–S/2005/534, *Report of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994*, 15/08/2005.

A/60/436, *Financing of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994: Financing of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991: Staff Retention and Legacy Issues: Report of the Secretary-General*, 17/10/2005.

A/60/863, Strengthening of the Coordination of Humanitarian and Disaster Relief Assistance of the United Nations, including Special Economic Assistance: Strengthening of the Coordination of Emergency Humanitarian Assistance of the United Nations: Information and Outreach Programmed Entitled “the Rwanda Genocide and the United Nations: Report of the Secretary-General, 08/06/2006.

A/61/265–S/2006/658, Report of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994, 16/08/2006.

A/61/PV.26, 61st Session: 26th Plenary Meeting, 09/10/2006.

A/62/284–S/2007/502, Report of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994, 21/08/2007.

A/62/PV.25, 62nd Session: 25th Plenary Meeting, 15/10/2007.

A/62/PV.54, 62nd Session: 54th Plenary Meeting, 19/11/2007.

A/62/PV.74, 62nd Session: 74th Plenary Meeting, 17/12/2007.

A/63/209–S/2008/514, Report of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994, 04/08/2008.

A/63/PV.24, 63rd Session: 24th Plenary Meeting, 13/10/2008.

A/64/206–S/2009/396, Report of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994, 31/07/2009.

A/64/PV.16, 64th Session: 16th Plenary Meeting, 08/10/2009.

A/65/188–S/2010/408, *Report of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994*, 30/07/2010.

A/66/143, *Request for the Inclusion of an Item in the Provisional Agenda of the Sixty–Sixth Session International Residual Mechanism for Criminal Tribunals*, 23/06/2011.

A/66/537, *International Residual Mechanism for Criminal Tribunals: Financing of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994: Financing of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991: Budget for the International Residual Mechanism for Criminal Tribunals for the biennium 2012–2013*, 03/11/2011.

A/66/600, *International Residual Mechanism for Criminal Tribunals: Financing of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994: Financing of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991: Second performance reports for the biennium 2010–2011 and proposed budgets for the biennium 2012–2013 of the International Criminal Tribunal for Rwanda and the International Tribunal for the former Yugoslavia and proposed budget for the International Residual Mechanism for Criminal Tribunals for the biennium 2012–2013: Report of the Advisory Committee on Administrative and Budgetary Questions*, 09/12/2011.

A/66/754, *Construction of a new facility for the International Residual Mechanism for Criminal Tribunals, Arusha branch: Report by the UNSG*, 28/03/2012.

A/66/PV.58, 66th Session: 58th Plenary Meeting, 11/11/2011.

A/67/5/Add.11, *International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994: Financial Report and Audited Financial Statements for the biennium ended 31 December 2011*, 19/07/2012.

A/67/696, *Construction of A New Facility for the International Residual Mechanism for Criminal Tribunals, Arusha Branch*, 16/01/2013.

A/67/PV.62, 67th Session: 62nd Plenary Meeting, 21/12/2012.

A/68/491, *Financing of the International Residual Mechanism for Criminal Tribunals: Budget for the International Residual Mechanism for Criminal Tribunals for the Biennium 2014–2015: Report of the Secretary–General*, 27/09/2013.

A/68/497, *Assistance to Survivors of the 1994 Genocide in Rwanda, Particularly Orphans, Widows and Victims of Sexual Violence: Assistance to Survivors of the 1994 Genocide in Rwanda, Particularly Orphans, Widows and Victims of Sexual Violence: Report of the Secretary–General*, 03/10/2013.

A/68/PV.33, 68th Session: 33rd Plenary Meeting, 14/10/2013.

A/68/PV.5, 68th Session: 5th Plenary Meeting, 24/09/2013.

A/69/206–S/2014/546, *Report of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States Between 1 January and 31 December 1994: Report of the International Criminal Tribunal for Rwanda*, 01/08/2014.

A/69/734, *Financing of the International Residual Mechanism for Criminal Tribunals: Construction of A New Facility for the International Residual Mechanism for Criminal Tribunals, Arusha Branch*, 19/01/2015.

A/70/218–S/215/577, *Report of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International*

Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States Between 1 January and 31 December 1994: Report of the International Criminal Tribunal for Rwanda, 31/07/2015.

A/70/225–S/2015/536, *International Residual Mechanism for Criminal Tribunals: International Residual Mechanism for Criminal Tribunals*, 31/07/2015.

A/70/PV.31, 70th Session: 31st Plenary Meeting, 13/10/2015.

A/C.3/49/SR.45, *Third Committee: Forty-Ninth Session, Summary Record of the 45th Meeting*: 28/11/1994.

A/C.3/51/SR.41, *Third Committee: Summary Record of the 41st Meeting*, 18/11/1996.

A/C.3/51/SR.44, *Third Committee: Summary Record of the 44th Meeting*, 19/11/1996.

A/C.3/51/SR.49, *Third Committee: Summary Record of the 49th Meeting*, 22/11/1996.

A/C.3/52/SR.34, *Third Committee: Summary Record of the 34th Meeting*, 17/02/1998.

A/C.3/53/L.29/Rev.1, *Situation of human rights in Rwanda: Draft Resolution*, 19/11/1998.

A/C.5/48/SR.57, *Fifth Committee: Summary Record of the 57th Meeting: Financing of the United Nations Observer Mission Rwanda*, A/C.5/48/SR.57, 29/03/1994.

A/C.5/51/SR.39 *Fifth Committee: 51st Session: Summary Record of the 39th Meeting*, 11/12/1996.

A/C.5/52/12, *Report of the Secretary-General on the Activities of the office of internal Oversight Services*, 04/11/1997.

A/C.5/52/SR.68, *Fifth Committee: Summary Record of the First Part of the 68th Meeting*, 08/07/1998.

A/C.5/53/15, *Financing the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994: Report by the Secretary General*, 12/10/1998

A/C.5/57/L.35, *Financing of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994*, 04/12/2002.

A/C.5/66/L.13, *Draft Resolution: International Residual Mechanism for Criminal Tribunals*, 23/12/2011.

A/CONF.187/8, *UN Secretariat, Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders Vienna, 10–17 April 2000*, 15/12/1999.

A/HRC/10/30, *Annual report of the United Nations High Commissioner for Human Rights and Reports of the Office of the High Commissioner and the Secretary-General: Efforts of the United Nations System to Prevent Genocide and the Activities of the Special Adviser to the Secretary-General on the Prevention of Genocide*, 18/02/2009.

A/HRC/12/19, *Annual Report of the United Nations High Commissioner for Human Rights and Reports of the office of the High Commissioner and the Secretary-General Right to the truth: Report of the office of the High Commissioner for Human Rights*, 21/08/2009.

A/HRC/21/46, *Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, Pablo De Greiff*, 09/08/2012.

A/RES/51/114, *Resolution 51/114*, 07/03/1997.

A/RES/51/215, *Resolution 51/215 Financing of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations*, 04/03/1997.

A/RES/53/213, *Resolution 53/213*, 10/02/1999.

A/RES/60/225, *Resolution 60/225*, 22/03/2006.

United Nations Economic and Social Council

E/1994/SR.8, *Provisional Summary Record of the 8th Meeting*, 14/06/1994.

E/CN.4/1995/7, *Question of the Violation of Human Rights and Fundamental Freedoms in any Part of the World, with Particular Reference to Colonial and Other Dependent Countries and Territories: Report on the Situation of Human Rights in Rwanda Submitted by Mr. R. Degni-Ségui, Special Rapporteur of the Commission on Human Rights, Under Paragraph 20 of Commission Resolution E/CN.4/S-3/1 of 25 May 1994*, 28/06/1994.

E/CN.4/1997/61, *Question of the Violation of Human Rights and Fundamental Freedoms in any Part of the World, with Particular Reference to Colonial and Other Dependent Countries and Territories Report on the Situation of Human Rights in Rwanda Submitted by Mr. René Degni-Ségui, Special Rapporteur of the Commission on Human Rights, Under Paragraph 20 of Resolution S-3/1 of 25 May 1994*, 20/01/1997.

E/CN.4/1997/L.81, *Question of the Violation of Human Rights and Fundamental Freedoms in Any Part of the World, With Particular Reference to Colonial and Other Dependent Countries and Territories*, 15/04/1997.

E/CN.4/1998/33, *Question of the Human Rights of All Persons Subjected to any form of Detention or Imprisonment: Security of United Nations Personnel: Report of the Secretary-General*, 27/02/1998.

E/CN.4/1998/54/Add.1, *Further Promotion and Encouragement of Human Rights and Fundamental Freedoms, including the Question of the Programme and Methods of Work of the Commission Alternative Approaches and Ways and Means within the United Nations System for Improving the Effective Enjoyment of Human Rights and Fundamental Freedoms Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences, Ms. Radhika Coomaraswamy Addendum Report of the Mission to Rwanda on the Issues of Violence Against Women in Situations of Armed Conflict*, 04/02/1998.

E/CN.4/1998/64, *Question of the Violation of Human Rights and Fundamental Freedoms in any Part of the World, with Particular Reference to Colonial and Other Dependent Countries and Territories Report on Allegations of Massacres and Other Human Rights Violations Occurring in Eastern Zaire (Now the Democratic Republic of the Congo) Since September 1996, Prepared by Mr. Roberto Garretón, Special Rapporteur on the Situation of Human Rights in the Democratic Republic of the Congo, Mr. Bacre Waly Ndiaye, Special Rapporteur on Extrajudicial, Summary Or Arbitrary Executions, and Mr. Jonas Foli, Member of the Working Group on Enforced Or involuntary Disappearances, Pursuant to Paragraph 6 of Commission on Human Rights Resolution 1997/58*, 23/01/1998.

E/CN.4/1998/NGO/7, *Question of the Violation of Human Rights and Fundamental Freedoms in any Part of the World, with Particular Reference to Colonial and Other Dependent Countries and Territories: Written Statement Submitted by the International Federation of Human Rights Leagues, A Non-Governmental Organization in Special Consultative Status: Situation in Rwanda*, 09/02/1998.

E/CN.4/1998/SR.2, *Fifty-Fourth Session: Summary Record of the 2nd Meeting*, 19/03/1998.

E/CN.4/1999/33, *Question of the Violation of Human Rights and Fundamental Freedoms in any Part of the World: Report on the Situation of Human Rights in Rwanda Submitted by the Special Representative, Mr. Michel Moussalli, Pursuant to Resolution 1998/69*, 08/02/1999.

E/CN.4/2006/91, *Promotion and Protection of Human Rights: Study on the Right to the Truth: Report of the office of the United Nations High Commissioner for Human Rights*, 08/02/2006.

E/CN.4/Sub.2/1998/13, *Contemporary forms of Slavery: Systematic Rape, Sexual Slavery and Slavery-Like Practices During Armed Conflict: Final Report Submitted by Ms. Gay J. McDougall, Special Rapporteur*, 22/06/1998.

United Nations Security Council

S/1994/1115, *Letter Dated 28 September 1994 from the Permanent Representative of Rwanda to the United Nations Addressed to the President of the Security Council: Statement Dated 28 September 1994 on the Question of Refugees and Security in Rwanda*, S/1994/1115, 29/09/1994.

S/1994/1125, *Preliminary Report of the independent Commission of Experts Established in Accordance with Security Council Resolution 935 (1994)*, 04/10/1994.

S/1994/1157/Add.1, *Situation of Human Rights in Rwanda: Third Report on the Situation of Human Rights in Rwanda Submitted by Mr. René Degni-Ségui, Special Rapporteur of the Commission on Human Rights, Under Paragraph 20 of Resolution S-3/1 of 25 May 1994*, 14/11/1994.

S/1994/1405, Letter Dated 9 December 1994 From the Secretary-General Addressed to the President of the Security Council: Final Report of the Commission of Experts Established Pursuant to Security Council Resolution 935 (1994), 09/12/1994.

S/1994/640, Report of the Secretary-General on the Situation in Rwanda, 31/05/1994.

S/1995/134, Report of the Secretary-General Pursuant to Paragraph 5 of Security Council Resolution 955 (1994), 13/02/1995.

S/1995/457, Report of the Secretary-General on the United Nations Assistance Mission for Rwanda, 04/06/1995.

S/1996/149, Report of the Secretary-General on the United Nations Assistance Mission for Rwanda, 29/02/1996.

S/1997/178, Letter Dated 3 March Dated 3 March 1997 from the Permanent Representative of Rwanda to the United Nations Addressed to the President of the Security Council: Memorandum dated 19 February 1997 on the crisis in Eastern Zaire, addressed to Mr. Mohammed Sahnoun, Special Representative of the United Nations and the Organization of African Unity for the Great Lakes region, on the occasion of his visit to Rwanda, 28/02/1997.

S/1999/1257, Report of the Independent Inquiry into the Actions of the United Nations During the Rwandan Genocide, 16/12/1999.

S/2000/11989, Letter from President Pillay to the President of the United Nations Security Council, 15/12/2000.

S/2002/1043, Letter dated 17 September 2002 from the Permanent Representative of Rwanda to the United Nations addressed to the President of the Security Council, 19/09/2002.

S/2002/1375, Letter dated 16 December 2002 from the Secretary-General addressed to the President of the Security Council, 19/12/2002.

S/2003/794, Letter from Permanent Representative for Rwanda Addressed to the President of the Security Council, 05/08/2003.

S/2003/946, Letter dated 3 October 2003 from the Secretary-General Addressed to the President of the Security Council: Completion Strategy of the International Criminal Tribunal for Rwanda, 06/10/2003.

S/2004/341, Letter dated 30 April 2004 from the President of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994 addressed to the President of the Security Council: Completion strategy of the International Criminal Tribunal for Rwanda, 03/05/2004.

S/2004/616, the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies: Report of the Secretary-General, 23/08/2004.

S/2004/921, Letter dated 19 November 2004 from the President of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994 addressed to the President of the Security Council: Completion strategy of the International Criminal Tribunal for Rwanda, 22/11/2004.

S/2005/782, Letter dated 5 December 2005, from the President of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994 addressed to the President of the Security Council: Completion strategy of the International Criminal Tribunal for Rwanda, 14/12/2005.

S/2006/951, Letter dated 30 November 2006 from the President of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994 addressed to the President of the Security Council: Completion strategy of the International Criminal Tribunal for Rwanda, 08/12/2006.

S/2007/676, Letter dated 16 November 2007 from the President of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious

Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994 addressed to the President of the Security Council: Completion strategy of the International Criminal Tribunal for Rwanda, 20/11/2007.

S/2008/726, Letter Dated 21 November 2008 From the President of the International Criminal Tribunal for Rwanda Addressed to the President of the Security Council: Report on the Completion Strategy of the International Criminal Tribunal for Rwanda, 21/11/2008.

S/2008/849, Letter dated 19 December 2008 from the Permanent Representative of Belgium to the United Nations addressed to the President of the Security Council, 31/12/2008.

S/2009/258, Report of the Secretary-General on the Administrative and Budgetary Aspects of the Options for Possible Locations for the Archives of the International Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda and the Seat of the Residual Mechanism(S) for the Tribunals, 21/05/2009.

S/2009/362, Report of the Secretary-General Pursuant to Security Council Resolution 1820 (2008), 20/08/2009.

S/2009/587, Letter dated 12 November 2009 from the President of the International Criminal Tribunal for Rwanda addressed to the President of the Security Council: Report on the completion strategy of the International Criminal Tribunal for Rwanda, 12/11/2009.

S/2010/574, Letter dated 12 November 2009 from the President of the International Criminal Tribunal for Rwanda addressed to the President of the Security Council: Report on the completion strategy of the International Criminal Tribunal for Rwanda (as of 1 November 2010), 05/11/2010.

S/2010/684, Letter dated 30 December 2010 from the Chair of the informal Working Group on International Tribunals addressed to the President of the Security Council: annex to the letter dated 30 December 2010 from the Chair of the informal Working Group on International Tribunals Addressed to the President of the Security Council, 31/12/2010.

S/2011/317, Letter dated 12 May 2011 from the President of the International Criminal Tribunal for Rwanda addressed to the President of the Security Council: Report on the

completion strategy of the International Criminal Tribunal for Rwanda (as of 12 May 2011), 18/05/2011.

S/2011/731, Letter dated 16 November 2011 from the President of the International Criminal Tribunal for Rwanda addressed to the President of the Security Council: Report on the completion strategy of the International Criminal Tribunal for Rwanda (as of 4 November 2011), 16/11/2011.

S/2012/349, Letter dated 22 May 2012 from the President of the International Criminal Tribunal for Rwanda addressed to the President of the Security Council: Report on the Completion Strategy of the International Criminal Tribunal for Rwanda (as at 11 May 2012), 22/05/2012.

S/2012/373, Letter Dated 18 May 2012 from the Permanent Representative of Portugal to the United Nations Addressed to the President of the Security Council: Report of the Workshop on Accountability and Fact-Finding Mechanisms for Violations of International Humanitarian Law and Human Rights Law: the Role of the Security Council — Past and Future, 30/05/2012.

S/2012/664, Letter Dated 17 August 2012 From the Secretary-General Addressed to the President of the Security Council Letter dated 3 August 2012 from the Prosecutor of the International Criminal Tribunal for Rwanda and the International Residual Mechanism for Criminal Tribunals addressed to the Secretary-General, 24/08/2012.

S/2012/836, Letter Dated 14 November 2012 From the President of the International Criminal Tribunal for Rwanda Addressed to the President of the Security Council: Report on the Completion Strategy of the International Criminal Tribunal for Rwanda (As At 5 November 2012), 14/11/2012.

S/2012/849, Letter dated 16 November 2012 from the President of the International Residual Mechanism for Criminal Tribunals addressed to the President of the Security Council: Progress report of the President of the International Residual Mechanism for Criminal Tribunals, Judge Theodor Meron (for the period from 1 July to 14 November 2012), 16/11/2012.

S/2013/309, Letter Dated 23 May 2013 from the President of the International Residual Mechanism for Criminal Tribunals Addressed to the President of the Security Council: Progress Report of the President of the International Residual Mechanism for Criminal

Tribunals, Judge Theodor Meron, for the Period From 15 November 2012 to 23 May 2013, 23/05/2013.

S/2013/310, Letter dated 23 May 2013 from the President of the International Criminal Tribunal for Rwanda addressed to the President of the Security Council: Report on the completion strategy of the International Criminal Tribunal for Rwanda (as at 10 May 2013), 23/05/2013.

S/2013/460, Report of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States Between 1 January and 31 December 1994, 02/08/2013.

S/2013/663, Letter Dated 13 November 2013 from the President of the International Criminal Tribunal for Rwanda Addressed to the President of the Security Council: Report on the Completion Strategy of the International Criminal Tribunal for Rwanda (As At 5 November 2013), 13/11/2013.

S/2013/679, Letter Dated 18 November 2013 from the President of the International Residual Mechanism for Criminal Tribunals Addressed to the President of the Security Council: Assessment and Progress Report of the President of the International Residual Mechanism for Criminal Tribunals, Judge Theodor Meron, for the Period From 23 May 2013 to 15 November 2013, 18/11/2013.

S/2014/265, Letter Dated 11 April 2014 from the President of the Security Council Addressed to the Secretary-General: Annex to the Letter Dated 11 April 2014 From the President of the Security Council Addressed to the Secretary-General Threat to International Peace and Security: Prevention of and Fight Against Genocide, 14/04/2014.

S/2014/270, Resolution: S/RES/2150, 16/04/2014.

S/2014/343, Letter Dated 15 May 2014 from the President of the International Criminal Tribunal for Rwanda Addressed to the President of the Security Council: Report on the Completion Strategy of the International Criminal Tribunal for Rwanda As At 5 May 2014, 15/05/2014.

S/2014/826, Letter Dated 19 November 2014 from the President of the International Residual Mechanism for Criminal Tribunals Addressed to the President of the Security Council: Assessment and Progress Report of the President of the International Residual Mechanism for Criminal Tribunals, Judge Theodor Meron, for the Period From 16 May to 19 November 2014, 19/11/2014.

S/2015/340, Letter Dated 15 May 2015 from the President of the International Criminal Tribunal for Rwanda Addressed to the President of the Security Council: Report on the Completion Strategy of the International Criminal Tribunal for Rwanda As At 5 May 2015, 15/05/2015.

S/2015/884, Letter Dated 17 November 2015 from the President of the International Criminal Tribunal for Rwanda Addressed to the President of the Security Council: Report on the Completion of the Mandate of the International Criminal Tribunal for Rwanda as at 15 November 2015, 17/11/2015.

S/PV.3326, Provisional Verbatim Record of the Three Thousand Three Hundred and Twenty-Sixth Meeting, 06/01/1994.

S/PV.3337, Provisional Verbatim Record of the Three Thousand Three Hundred and Thirty-Seventh Meeting, 17/02/1994.

S/PV.3358, 3358th Meeting, 05/04/1994.

S/PV.3368, 3368th Meeting, 21/04/1994.

S/PV.3371, 3371st Meeting, 30/04/1994.

S/PV.3377, 3377th Meeting, 16/05/1994.

S/PV.3388, 3388th Meeting, 08/06/1994.

S/PV.3391, 3391st Meeting, 20/06/1994.

S/PV.3392, 3392nd Meeting, 22/06/1994.

S/PV.3400, 3400th Meeting, 01/07/1994.

S/PV.3402, 3402nd Meeting, 11/07/1994.

S/PV.3405, 3405th Meeting, 14/07/1994.

S/PV.3436, 3436th Meeting, 14/10/1994.

S/PV.3453, 3453rd Meeting, 08/11/1994.
S/PV.3473, 3473rd Meeting, 30/11/1994.
S/PV.3542, 3542nd Meeting, 09/06/1995.
S/PV.3566, 3566th Meeting, 16/08/1995.
S/PV.3640, 3640th Meeting, 08/03/1996.
S/PV.3656, 3656th Meeting, 23/04/1996.
S/PV.3877, 3877th Meeting, 30/04/1998.
S/PV.3968, 3968th Meeting, 21/01/1999.
S/PV.4049, 4049th Meeting 30/09/1999.
S/PV.4150, 4150th Meeting, 02/06/2000.
S/PV.4229, 4229th Meeting, 21/11/2000.
S/PV.4429, 4429th Meeting, 27/11/2001.
S/PV.4999, 4999th Meeting, 29/06/2004.
S/PV.5453, 5453rd Meeting, 07/06/2006.
S/PV.5474, 5474th Meeting, 22/06/2006.
S/PV.5594, 5584th Meeting, 15/12/2006.
S/PV.5697, 5697th Meeting, 18/06/2007.
S/PV.6041, 6041st Meeting, 12/12/2008.
S/PV.6228, 6228th Meeting, 03/12/2009.
S/PV.6463, 6463rd Meeting, 22/12/2010.
S/PV.6678, 6678th Meeting, 07/12/2011.
S/PV.6880, 6800th Meeting, 05/12/2012.
S/PV.6782, 6782nd Meeting, 07/06/2012.
S/PV.6790, 6790th Meeting, 25/06/2012.

S/PV.6880, 6800th Meeting, 05/12/2012.

S/PV.6917, 6917th Meeting, 12/02/2013.

S/PV.6977, 6977th Meeting, 12/06/2013.

S/PV.7073, 7073rd Meeting, 05/12/2013.

S/PV.7155, 7155th Meeting, 16/04/2014.

S/PV.7160, 7160th Meeting, 25/04/2014.

S/PV.7192, 7192nd Meeting, 05/06/2014.

S/PV.7455, 7455th Meeting, 03/06/2015.

S/PV.7574, 7574th Meeting, 09/12/2015.

S/PV.7636, 7636th Meeting, 29/02/2016.

S/RES/918, *Resolution 918*, 17/05/1994.

S/RES/955, *Resolution 955*, 08/11/1994.

S/RES/1078, *Resolution 1078*, 09/11/1996.

S/RES/1165, *Resolution 1165*, 30/04/1998.

S/RES/1503, *Resolution 1503*, 28/08/2003.

S/RES/1995, *Resolution 1995*, 06/07/2011.

S/RES/1966, *Resolution 1966*, 22/12/2010.

Other United Nations Documents

CERD/C/SR.1212, *International Convention on the Elimination of all forms of Racial Discrimination, Summary of Record of the 1212th Meeting*, 26/03/1997.

DP/CCF/ RWA/1, Executive Board of the United Nations Development Programme and of the United Nations Population Fund, *UNDP: Country Cooperation Frameworks and Related Matters: First Country Cooperation Framework for Rwanda 1998–2000*, 09/02/1998.

ST/SGB/2012/3, *Secretary-General Bulletin: International Criminal Tribunals: Information Sensitivity, Classification, Handling and Access*, 20/07/2012.

Periodicals

The Daily Mail

The Mail on Sunday

The Sun

The Guardian

The Observer

The Times

The Sunday Times

New York Times

The Washington Post

Hansard, 6 April 1994 to 18 July 1994.

Internet Materials

African Rights and Redress. *Survivors and Post-genocide Justice in Rwanda: Their Experiences, Perspectives and Hopes*. (November 2008). At: <http://www.redress.org/downloads/publications/Rwanda%20Survivors%2031%20Oct%202008.pdf> (last accessed 16/01/2017).

BBC News. 'Warning over Rwandan Suspect'. (22/02/2000). At: <http://news.bbc.co.uk/1/hi/world/africa/651921.stm>, (last accessed 04/05/2017).

Butler, Judith. 'What Is Critique?'. At: <http://f-origin.hypotheses.org/wp-content/blogs.dir/744/files/2012/03/butler-2002.pdf> (04/03/2014).

The Citizen. 'Former Rwandan Convicts Stranded'. At: <http://www.thecitizen.co.tz/News/former-Rwandan-convicts-stranded-/1840340-3379100-1hn2tt/index.html> (last accessed, 11/05/2017).

Gallimore, Tim. 'The ICTR Outreach Program: Integrating Justice and Reconciliation,' *Conference on Challenging Impunity*. Kigali Novotel (7–8 November 2006). At: http://iccforum.com/media/background/outreach/2006-11-08_Gallimore-

[The ICTR Outreach Program-Integrating Justice and Reconciliation.pdf](#) (last accessed, 01/08/2017)

Hegel, Georg. *Philosophy of Right* Quoted on:

<https://www.marxists.org/archive/marx/works/1853/02/18.htm> (last accessed 25/05/2017).

ICTR (Press Release), 'Trial of Yussuf Munyakazi Starts'. (22/04/2000) At:

<http://unictr.unmict.org/en/news/trial-yussuf-munyakazi-starts> (last accessed 03/10/2016).

ICTR Statute. At: <http://unictr.unmict.org/en/documents/statute-and-creation> (last accessed 24/05/2017).

Immigration and Refugee Board of Canada. 'Rwanda: Whether People who give testimony at the trials and hearings of those accused of genocide and crimes against humanity are being harassed, intimidated and threatened'. At: <http://www.refworld.org/docid/3ae6ac5950.html> (last accessed 01/02/2015).

Judge Harhoff Letter. At: <http://www.bt.dk/sites/default/files-dk/node-files/511/6/6511917-letter-english.pdf> (last accessed 01/06/2017).

Kennedy, David. 'Reassessing International Humanitarianism: The Dark Sides'. At: <http://www.law.harvard.edu/faculty/dkennedy/speeches/TheDarkSides.pdf> (last accessed 17/11/2016).

Kirsten, Mark. 'In Withdrawal? Africa and the International Criminal Court'. At: <https://justiceinconflict.org/2016/12/21/in-withdrawal-africa-and-the-International-criminal-court/> (last accessed 10/04/2017).

Mégret, Frederic. 'International Criminal Justice as a Juridical Field'. *Champ Pénal/Penal Field* 13 (2016). At: <http://journals.openedition.org/champpenal/9284> (last access 19/12/2017).

Moore, Jina. 'This Is the Story a UN Court Didn't Want Three Rape Survivors To Tell'. *Buzzfeed*. At: https://www.buzzfeed.com/jinamoore/this-is-the-story-a-un-court-didnt-want-three-rape-survivors?utm_term=.efwZxxYY8#.jawdwwrm (last accessed 16/01/2017).

Palmer, Nicola and Phil Clark. 'Testifying to Genocide: Victim and Witness Protection in Rwanda,' *Redress* (2012). At:

<http://protectionline.org/files/2012/11/121029ProtectionReport.pdf> (last accessed 17/07/2017).

Pendas, David. "'Eichmann in Jerusalem', Arendt in Frankfurt: The Eichmann Trial, the Auschwitz Trial, and the Banality of Justice'. At: <http://dukejournals.org/> (last accessed 02/05/2011).

Sellers, Patricia. 'The Prosecution of Sexual Violence in Conflict: The Importance of Human Rights as Means of Interpretation'. At:

http://www.ohchr.org/Documents/Issues/Women/WRGS/Paper_Prosecution_of_Sexual_Violence.pdf (last accessed 01/06/2017).

Stewart, James. 'NYU JILP Symposium: New Thoughts about Barayagwiza: Reactions to Policing International Prosecutors'. *Opinion Juris* (05/04/2014). At: <http://opiniojuris.org/2013/04/05/nyu-jilp-symposium-new-thoughts-about-barayagwiza-reactions-to-policing-international-prosecutors/> (last accessed 04/05/2017).

UNICTR Archives Website. At: <http://www.unmict.org/en/about/archives-International-criminal-tribunals> (last accessed 25/05/2016).

Van Schaack, Beth. 'Engendering Genocide: the Akayesu Case before the ICTR'. *Santa Clara Law* (2008). At: <http://digitalcommons.law.scu.edu/cgi/viewcontent.cgi?article=1626&context=facpubs> last accessed 08/08/2017), 1–29.

Published Sources

Achebe, Chinua. 'An Image of Africa'. *Massachusetts Review* 18:4 (1977): 782–94.

Adami, Tom. "'Who Will Be Left to Tell the Tale?'" Recordkeeping and International Criminal Jurisprudence'. *Archival Science* 7 (2007): 213–21.

Agamben, Giorgio. *Homo Sacer: Sovereign Power and Bare Life*. Stanford: Stanford University Press, 1998.

Agamben, Giorgio. *Remnants of Auschwitz: The Witness and the Archive*. New York: Zone Books, 1999.

Akhavan, Payam. 'Justice and Reconciliation in the Great Lakes Region of Africa: the Contribution of the International Criminal Tribunal for Rwanda'. *Duke Journal of Comparative and International Law* 7 (1996): 325–49.

—. *Reducing Genocide to Law: Definition, Meaning, and the Ultimate Crime*. Cambridge: Cambridge University Press, 2012.

—. 'The Impact of Cultural Diversity on International Criminal Proceedings'. *Journal of International Criminal Justice* 4:4 (2006): 745–64.

Alusala, Nelson. 'The Arming of Rwanda and the Genocide'. *African Security Studies* 13:2 (2004): 137–40.

Alvarez, Jose. 'Lessons from the Akayesu Judgement'. *Journal of International and Comparative Law* 5 (1998): 359–70.

Anderson, Benedict. *Imagined Communities: Reflections on the Origin and Spread of Nationalism*. London: Verso Books, 2006.

Andrieu, Kora. 'Civilising Peacebuilding: Transitional Justice, Civil Society and the Liberal Paradigm'. *Security Dialogue* 41:5 (2010): 537–58.

Anghie, Antony. *Imperialism, Sovereignty and the Making of International Law*. Cambridge: Cambridge University Press, 2005.

Arendt, Hannah. *Eichmann in Jerusalem: a Report on the Banality of Evil*. London: Penguin, 2006.

Assmann, Alieda. 'History, Memory, and the Genre of Testimony'. *Poetics Today* 27:2 (2006): 261–73.

Aukerman, Miriam. 'Extraordinary Evil, Ordinary Crime: A Framework for Understanding Transitional Justice'. *Harvard Human Rights Journal* 15 (2002): 39–96.

Ball, Howard. 'Formation of the ICTR'. In Totten and Bartrop, *The Genocide Studies Reader*, 468–73.

Banakar, Reza, and Max Travers, eds. *An Introduction to Law and Social Theory*. Oxford: Hart, 2002.

Bantekas, Ilias, and Susan Nash. *International Criminal Law*. London: Routledge, 2007.

Barnett, Michael. *Eyewitness to a Genocide: The United Nations and Rwanda*. London: Cornell University Press, 2002.

Bartrop, Paul, and Samuel Totten, eds. *The Genocide Studies Reader*. Abingdon: Routledge, 2009.

Bass, Gary. *Stay the Hand of Vengeance: the Politics of War Crimes Tribunals*. Princeton: Princeton University Press, 2000.

Bassiouni, Cherif. 'The Perennial Conflict between International Criminal Justice and Realpolitik'. *Georgia State University Law Review* 22:3 (2005): 541–61.

Beigbeder, Yves. *Judging Criminal Leaders: the Slow Erosion of Impunity*. The Hague: Springer, 2002.

Bell, Christine. 'Transitional Justice, Interdisciplinary and the State of the "Field" or Non-Field'. *The International Journal of Transitional Justice* 3:1 (2009): 5–27.

—, Antoine Hold, Diana Siegel, and David Nelken, eds. *Transitional Justice: Images and Memories*. Oxon: Routledge, 2016.

Bell, Duncan. 'Introduction: Memory, Trauma and World Politics'. In *Memory, Trauma and World Politics: Reflections on the Relationship Between Past and Present*, edited by Duncan Bell, 1–33. Basingstoke: Springer, 2006.

Benesch, Susan. 'Inciting Genocide, Pleading Free Speech'. *World Policy Journal* 21:2 (2004): 62–9.

Berger, Nico. 'Putting Gender and Sexuality on the Agenda: Queer Theory and Legal Politics', in Banakar and Travers, *Introduction to Law and Social Theory*, 173–88.

Biddiss, Michael. 'The Nuremberg Trial: Two Exercises in Judgment'. *Journal of Contemporary History* 16:3 (1981): 597–615.

Biju-Duval, Jean-Marie. "'Hate Media"—Crimes against Humanity and Genocide'. In Thompson, *The Media and the Rwandan Genocide*, 343–61.

Bloxham, Donald. *Genocide on Trial: War Crimes Trials and the Formation of Holocaust and Memory*. Oxford: Oxford University Press, 2001.

— and David Pendas. 'Prevention as Punishment? The Politics of Punishing Genocidaires'. In Bloxham and Pendas, *The Oxford Handbook to Genocide Studies*, 617–37.

—, eds. *The Oxford Handbook to Genocide Studies*. Oxford: Oxford University Press, 2010.

Blumenson, Eric. 'The Challenge of a Global Standard of Justice, Pluralism and Punishment at the International Criminal Court'. *Columbia Journal of Transnational Law* 44 (2006): 801–75.

Boas, Gideon. 'Creating Laws of Evidence for International Criminal Law: the ICTY and the Principle of Flexibility'. *Criminal Law Forum* 12:1 (2001): 41–90.

Bonafé, Beatrice. 'Finding a Proper Role for Command Responsibility'. *Journal of International Criminal Justice* 5:3 (2007): 599–618.

Bourdieu, Pierre. 'The Force of Law: toward a Sociology of the Juridical Field'. *The Hastings Law Journal*, 38 (1987): 805–50.

—. *Outline of a Theory of Practice*. Cambridge: Cambridge University Press, 1995.

Bracher, Nathan. 'La Mémoire Vive et Convulsive: The Papon Trial and France's Passion for History'. *The French Review* 73:2 (1999): 314–24.

—. 'The Trials of Papon and the Tribulations of Gaullism'. In Golson, *The Papon Affair*, 115–131.

Brahm, Eric. 'Uncovering the Truth: Examining Truth Commission Success and Impact'. *International Studies Perspectives* 8:1 (2007): 16–35.

Brooks, Peter. 'The Law as Narrative and Rhetoric'. In Brooks and Gewirtz, *Law's Stories*, 14–24.

— and Paul Gewirtz, eds. *Law's Stories: Narrative and Rhetoric in the Law*. London: Yale University Press, 1996.

Brothman, Brien. 'The Limits of Limits: Derridean Deconstruction and the Archival Institution'. *Archivaria* 36:1 (1993): 205–20.

—. 'Prefect Present, Perfect Gift: Finding a Place for Archival Consciousness in Social Theory'. *Archival Science* 10:2 (2010): 141–89.

Brown, Caroline. 'Memory, Identity and the Archival Paradigm: Introduction to the Special Issue'. *Archival Science* 13:2–3 (2013): 85–93.

Brown, Kris and Fionnuala Ni Aolain. 'Through the Looking Glass: Transitional Justice Futures through the Lens of Nationalism, Feminism and Transformative Change'. *International Journal of Transitional Justice* 9:1 (2015): 127–49.

Brown, Richard, and Beth Davis–Brown. ‘The Making of Memory: the Politics of the Archive, Libraries and Museums in the Construction of National Consciousness’. *History of Human Sciences* 11:4 (1998): 17–32.

Brown, Wendy. “‘The Most We Can Hope For...’: Human Rights and the Politics of Fatalism’. *The South Atlantic Quarterly* 103:2 (2004): 451–63.

Browning, Christopher. *Collected Memories*. Madison: University of Wisconsin Press, 2003.

Bunting, Annie. ‘Feminism, Foucault, and Law as Power/Knowledge’. *Alberta Law Review* 20:3 (1992): 829–42.

Burnet, Jennifer. ‘Gender Balance and the Meanings of Women in Governance in Post–Genocide Rwanda’. *African Affairs* 107:428 (2008): 361–86.

—. ‘Whose Genocide? Whose Truth? Representations of Victim and Perpetrator in Rwanda’. In Hinton and O’Neil, *Genocide*, 80–110.

Buruma, Ian. *Wages of Guilt*. London: Atlantic, 2009.

Butler, Judith. *Excitable Speech: A Politics of the Performative*. London: Routledge, 1997.

—. *Giving and Account of Oneself*. Fordham: Fordham University Press, 2005.

—. ‘Performative Agency’. *Journal of Cultural Economy* 3:2 (2010): 147–61.

—. *Precarious Life: The Powers of Mourning and Violence*. New York: Verso, 2004.

—. ‘Primo Levi for the Present’. In *Re–Figuring Hayden White*, edited by Frank Ankersmit, Ewa Domanska and Hans Kellner, 282–304. Stanford: Stanford University Press, 2009.

Byrne, Rosemary. ‘The New Public International Lawyer and the Hidden Art of International Criminal Trial Practice’. *Connecticut Journal of International Law* 243:25 (2010):243–303.

—. ‘Promises of Peace and Reconciliation: Previewing the Legacy of the International Criminal Tribunal for Rwanda’. *European Review* 14:4 (2006): 485–98.

Byron, Dennis. ‘Looking at Legacy and Looking Back on the Legacy Symposium’. *New England Journal of International and Comparative Law* 14:2 (2008): 319–22.

Campbell, Kirsten. ‘Acts of Testimony’. *Signs: Journal of Women in Culture and Society* 28:1 (2002): 149–78.

—. 'The Laws of Memory: The ICTY, Archive, and Transitional Justice'. *Social and Legal Studies* 22:2 (2013): 247–69.

—. 'Testimonial Modes: Witnessing, Evidence and Testimony before the International Criminal Tribunal for the Former Yugoslavia'. In Rowland and Jun, *Future of Testimony*, 83–113.

—. 'Victims and Perpetrators of International Crimes: The Problem of the "Legal Person"'. *Journal of International Humanitarian Legal Studies* 2:2 (2011): 325–51.

Chalk, Frank. 'Definitions of Genocide and their Implications for Prediction and Prevention'. *Holocaust and Genocide Studies* 4:2 (1989): 149–60.

Chaon, Anne. 'Who Failed in Rwanda, Journalists or the Media?'. In Thompson, *Media and the Rwandan Genocide*, 160–7.

Chapman, Audrey. 'Truth Finding in the Transitional Justice Process,' in *Assessing the Impact of Transitional Justice: Challenges for Empirical Research*, edited by Hugo Van Der Merwe, Victoria Baxter and Audrey Chapman, 91–114. Washington: United States Institute of Peace Press, 2009.

—, and Patrick Ball. 'The Truth of Truth Commissions: Comparative Lessons from Haiti, South Africa, and Guatemala'. *Human Rights Quarterly* 23:1 (2001): 1–43.

Charlesworth, Hilary, and David Kennedy. 'Afterword: and Forward—There Remains So Much We Do Not Know'. In Orford, *International Law and Its Others*, 401–9.

Clark, Phil. 'Establishing a Conceptual Framework: Six Key Transitional Justice Themes', in Clark and Kaufman, *After Genocide*, 191–207.

—. 'The Rules (and Politics) of Engagement: The *Gacaca* Courts and Post–Genocide Justice, Healing, and Reconciliation in Rwanda'. In Clark and Kaufman, *After Genocide*, 297–319.

—. 'Tensions in Transitional Justice'. In Clark and Kaufman, *After Genocide*, 381–93.

— and Zachary Kaufman. 'After Genocide', in Clark and Kaufman, *After Genocide*, 1–20.

— and Zachary Kaufman, eds. *After Genocide: Transitional Justice, Post–conflict Reconstruction and Reconciliation in Rwanda and Beyond*. New York: Columbia University Press, 2009.

— Zachary Kaufman and Kalypso Nicolaidis, 'Tensions in Transitional Justice'. In Clark and Kaufman, *After Genocide*, 381–93.

— and Nicola Palmer. ‘Challenging Transitional Justice’. In Palmer and Clark, *Critical Perspectives in Transitional Justice*, 1–16.

Cole, Tim. ‘The Holocaust and its (Re)Telling: The Nature of Evidence at the Nuremberg and Eichmann Trials’, in Kaufman *et al*, *From the Protocols of the Elders of Zion to Holocaust Denial Trials*, 56–66.

—. *Selling the Holocaust*. London: Routledge, 2000.

Combs, Nancy. *Fact-Finding without Facts: the Uncertain Evidentiary Foundations of International Criminal Law*. Cambridge: Cambridge University Press, 2010.

—. ‘Testimonial Deficiencies and Evidentiary Uncertainties in International Criminal Trials’. *International Foreign Affairs* 14:1 (2009): 235–73.

Conley, John, and William O’Barr. *Just Words: Law, Language, and Power*. Chicago: University of Chicago Press: Second Edition, 2005.

Cook, Terry, and Joan Schwartz. ‘Archives, Records and Power: From (Postmodern) Theory to (Archival) Performance’. *Archival Science* 2:1 (2002): 171–85.

Cover, Robert. ‘Violence and the Word’. In Minow *et al.*, *Narrative, Violence, and the Law*, 203–237.

Cruvellier, Thierry. *Courts of Remorse: Inside the International Criminal Tribunal for Rwanda*. Madison: University of Wisconsin Press, 2010.

Cunningham, Clark. ‘The Lawyer as Translator, Representation as Text: Towards an Ethnography of Legal Discourse’. *Cornell Law Review* 77:6 (1992): 1298–387.

Curry, Jane. ‘When an Authoritarian State Victimises the Nation: Transitional Justice, Collective Memory, and Political Divides’. *International Journal of Sociology* 37:1 (2007): 58–73.

Curtis, Mark. *The Ambiguities of Power: British Foreign Policy since 1945*. London: Zed Books, 1995.

Dallaire, Romeo. ‘The End of Innocence: Rwanda 1994’. In *Hard Choices: Moral Dilemmas in Humanitarian Intervention*, edited by Jonathan Moore, 71–87. Oxford: Rowman and Littlefield Publishers, 1998.

Dallaire, Romeo. *Shake Hands with the Devil: The Failure of Humanity in Rwanda*. London: Arrow Books, 2004.

Daly, Erin. 'Truth Scepticism: an Inquiry into the Value of Truth in Times of Transition'. *The International Journal of Transitional Justice* 2:1 (2008): 23–41.

Danner, Allison, and Jenny Martinez. 'Guilty Associations: Joint Criminal Enterprise, Command Responsibility, and the Development, and the Development of International Criminal Law'. *California Law Review* 93:1 (2005): 75–169.

Dauphinee, Elizabeth. 'War Crimes and the Ruin of Law'. *Millennium—Journal of International Studies* 37:1 (2008): 49–67.

de Brito, Alexander, Carmen Enríquez, and Paloma Aguilar, eds. *The Politics of Memory: Transitional Justice in Democratizing Societies*. Oxford: Oxford University Press, 2001.

de Brito, Alexandra, Carmen Enríquez and Paloma Aguilar. 'Introduction', in *The Politics of Memory*. 1–39.

de Sousa Santos, Boaventura. 'The Postmodern Transition: Law and Politics'. In Sarat and Kearns, *The Fate of Law*, 79–118.

Del Ponte, Carla. 'Investigation and Prosecution of Large-Scale Crimes at the International Level'. *Journal of International Criminal Justice* 4:3 (2006): 539–58.

Deleuze, Giles. *Foucault*, translated by Seán Hand. London: University of Minnesota Press, 1986.

—. 'What is Dispositif?'. In *Michel Foucault: Philosopher*, translated by Timothy Armstrong. Hemel Hempstead: Harvester Wheatsheaf, 1992, 159–69.

Dembour, Marie-Bénédicte, and Emily Haslam. 'Silencing Hearings? Victim-Witnesses at War Crime Trials'. *European Journal of International Law* 15:1 (2004): 151–78.

Derrida, Jacques. 'Archive Fever: A Freudian Impression'. *Diacritics* 25:2 (1995): 9–63.

—. 'Force of Law: The "Mystical Foundation of Authority"'. In *Deconstruction and the Possibility of Justice*, edited by Drucilla Cornell, Michel Rosenfeld and David Carlson. London: Routledge, 1992, 3–68.

Des Forges, Alison. 'Call to Genocide: Radio in Rwanda, 1994'. In Thompson, *The Media and the Rwandan Genocide*, 41–54.

—, and Timothy Longman. 'Legal Response to Genocide in Rwanda'. In Stover and Weinstein, *My Neighbour, My Enemy*, 49–67.

Dixon, Paul, and Chris Tenove. 'International Criminal Justice as a Transnational Field: Rules, Authority and Victims'. *International Journal of Transitional Justice* 7:3 (2013): 393–412.

Dixon, Rosalind. 'Rape as a Crime in International Humanitarian Law: Where to from Here?'. *European Journal of International Law* 13:3 (2002): 697–720.

Douglas, Lawrence. 'History, Memory and Crimes against Humanity: a Response to Todorov'. *Salmagundi* 128:129 (2001): 320–6.

—. *The Memory of Judgement: Making Law and History in the Trials of the Holocaust*. London: Yale University Press, 2001.

—. 'The Shrunken Head of Buchenwald: Icons of Atrocity at Nuremberg'. *Representations* 63 (1998): 39–64.

Drexler, Elizabeth. 'The Failure of International Justice in East Timor and Indonesia'. In Hinton, *Transitional Justice*, 49–66.

Drumbl, Mark. *Atrocity, Punishment, and International Law*. Cambridge: Cambridge University Press, 2007.

—. 'Pluralising International Criminal Justice: from Nuremberg to The Hague: the Future of International Criminal Justice by Philippe Sands'. *Michigan Law Review* 103:6 (2005): 1295–328.

—. 'Punishment, Post-genocide: from Guilt to Shame to Civis in Rwanda'. *New York University Law Review* 75:5 (2000): 1222–326.

—. 'When "Mere Presence" Implicates, but the "Scale of the Operation" Mitigates: The Curious Criminality of Mass Atrocity'. *Social Science Research Network* (October, 2012): 1–36.

Edkins, Jenny. *Trauma and the Memory of Politics*. Cambridge: Cambridge University Press, 2003.

Elster, Jon. *Closing the Books: Transitional Justice in Historical Perspective*. Cambridge, Cambridge University Press, 2004.

Eltringham, Nigel. "'Judging the Crimes of Crimes": Continuity and Improvisation at the International Criminal Tribunal for Rwanda'. In Hinton, *Transitional Justice*, 179–205.

—. 'The Past Is Elsewhere: The Paradoxes of Proscribing Ethnicity in Post-genocide Rwanda'. In Straus, *Remaking Rwanda*, 269–83.

—. “‘A War Crimes Community?’: The Legacy of the International Criminal Tribunal for Rwanda Beyond Jurisprudence’. *New England Journal of International Law and Compliance* 14:2 (2008): 309–18.

—. “‘We Are Not a Truth Commission’: Fragmented Narratives and the Historical Record at the International Criminal Tribunal for Rwanda’. *Journal of Genocide Research* 11:1 (2009): 55–79.

—. “‘When We Walk Out, What Was It All About?’: Views on New Beginnings from within the International Criminal Tribunal for Rwanda’. *Development and Change* 45:3 (2014): 543–64.

Erickson, Bonnie, Allan Lind, Bruce Johnson, and William O’Barr. ‘Speech Style and Impression Formation in a Court Setting: The Effects of “Powerful” and “Powerless” Speech’. *Journal of Experimental Social Psychology* 14:3 (1978): 266–79.

Evans, Richard. ‘History, Memory, and the Law: The Historian as Expert Witness’. *History and Theory* 41:3 (2002): 326–45.

Felman, Shoshana. ‘Fire in the Archive: the Alignment of Witnesses’. In Rowland and Jun, *Future of Testimony*: 48–68.

—. *The Juridical Unconscious: Trials and Traumas in the Twentieth Century*. London: Harvard University Press, 2002.

—. ‘Theatres of Justice: Arendt in Jerusalem, the Eichmann Trial, and the Redefinition of Legal Meaning’. *Critical Inquiry* (2001): 201–38.

—. ‘Theatres of Justice: Arendt in Jerusalem, the Eichmann Trial, and the Redefinition of Legal Meaning in the Wake of the Holocaust’. *Theoretical Inquiries in Law* 1:2 (2000): 465–508.

Fergal, Gaynor. ‘Uneasy Partners—Evidence, Truth and History in International Trials’. *Journal of International Criminal Justice* 10:5 (2012): 1257–75.

Findlay, Mark, and Ralph Henham. *Transforming International Criminal Justice: Retributive and Restorative Justice*. London: Routledge, 2005.

Fink, Joseph. ‘Deontological Retributivism and the Legal Practice of International Jurisprudence: The Case of the International Criminal Tribunal for Rwanda’. *Journal of African Law* 49:2 (2005): 101–31.

Fish, Stanley. ‘The Law Wishes to Have a Formal Existence’. In Sarat and Kearns (eds), *The Fate of Law*, 159–208;

Fletcher, Laurel. 'From Indifference to Engagement: Bystanders and International Criminal Justice,' *Michigan Journal of International Law* 26 (2004): 1013–97.

Foucault, Michel. *The Archaeology of Knowledge and the Discourse on Language*, translated by Alan Sheridan. New York: Pantheon Books, 1972.

—. *The Birth of the Clinic: An Archaeology of Medical Perception*, translated by. Alan Sheridan. London: Routledge, 2003.

—. 'Body/Power'. In Gordon, *Power/Knowledge*, 55–62.

—. 'The Confession of the Flesh: an Interview with Michel Foucault'. In Gordon, *Power/Knowledge*, 194–228.

—. *Discipline and Punish: The Birth of the Prison*, translated by Alan Sheridan. New York: Vintage, 1977.

—. 'The History of Sexuality'. In Gordon, *Power/Knowledge*, 183–93.

—. *Madness and Civilisation: A History of Insanity in the Age of Reason*, translated by. Richard Howard. London: Routledge, 2003.

—. 'Nietzsche, Genealogy, History'. In Rainbow, *Foucault Reader*, 76–101.

—. 'The Order of Discourse'. In *Untying the Text: A Post-Structuralist Reader*, edited by Robert Young. London: Routledge, 1981, 48–78.

—. 'Polemics, Politics and Problematisation'. In Rainbow, *Foucault Reader*, 381–9.

—. 'The Politics of Health in the Eighteenth Century'. In Gordon, *Power/Knowledge*, 166–182.

—. 'Power and Strategies'. In Gordon, *Power/Knowledge*, 134–45.

—. 'Two Lectures'. In Gordon, *Power/Knowledge*, 78–108.

—. 'Truth and Power'. In Gordon, *Power/Knowledge*, 109–133.

Fourlas, George. 'No Future without Transition: A Critique of Liberal Peace'. *International Journal of Transitional Justice* 9:1 (2015): 109–26.

Franke, Katherine. 'Gendered Subjects of Transitional Justice'. *Journal of Gender and Law* 15:3 (2006): 813–28.

Fujii, Lee. *Killing Neighbours: Webs of Violence in Rwanda*. London: Cornell University Press, 2009.

Gallimore, Tim. 'The Legacy of the International Criminal Tribunal for Rwanda (ICTR) and its Contributions to Reconciliation in Rwanda'. *New England Journal of International and Comparative Law* 14:2 (2007): 239–66.

Garbett, Claire. 'The Truth and the Trial: Victim Participation, Restorative Justice, and the International Criminal Court'. *Contemporary Justice Review* 16:2 (2013): 193–213.

Gewirtz, Paul. 'Narrative and Rhetoric in the Law'. In Brooks and Gewirtz, *Law's Stories*, 2–13.

Ginzburg, Carlo. 'Checking the Evidence: the Judge and the Historian'. *Critical Inquiry*, 18:1 (1991): 79–92.

Goldstone, Richard. 'From the Holocaust: Some Legal and Moral Implications'. In *Is the Holocaust Unique?: Perspectives on Comparative Genocide*, edited by Alan Rosenbaum, 41–7. Oxford: Westview Press: 2nd Edition, 2000.

—. 'Justice as a Tool for Peace-making: Truth Commissions and International Criminal Tribunals'. *Journal of International Law and Politics* 28 (1995): 485–504.

Golsan, Richard. 'Introduction: Maurice Papon and Crimes against Humanities in France'. In Golsan, *Papon Affair*, 1–35.

—. 'The Legacy of WWII in France'. In Lebow *et al.*, *Politics of Memory in Postwar Europe*, 73–103.

—. 'Papon: The Good, the Bad and the Ugly'. *SubStance* 29:1 (2000): 139–52.

—, ed. *The Papon Affair*. London: Routledge, 2000.

Goose, Stephan, and Frank Smyth. 'Arming Genocide in Rwanda, the High Cost of Small Arms Transfers'. *Foreign Affairs* 73:5 (1994): 86–96.

Gordon, Colin. 'Afterword'. In Gordon, *Power/ Knowledge*, 229–61.

—, ed. *Power/ Knowledge: Selected Interviews and Other Writings 1972–1977*, translated by Colin Gordon. New York: Pantheon Books, 1980.

Gow, James. 'The ICTY, War Crimes Enforcement and Dayton: The Ghost in the Machine'. *Ethnopolitics* 5:1 (2006): 49–65.

Grabitz, Helge. 'Problems of Nazi Trials in the Federal Republic of Germany'. *Holocaust and Genocide Studies* 3 (1988): 209–22.

Gready, Paul. 'Analysis: Reconceptualising Transitional Justice: Embedded and Distanced Justice'. *Conflict, Security and Development* 5:1(2005): 3–21.

Greetham, David. "'Who's In, Who's Out": The Cultural Poetics of Archival Exclusion'. *Studies in the Literary Imagination* 32:1 (1999): 1–28.

Grossberg, Michel. 'How to Tell Law Stories'. *Law and Social Inquiry* 23:2, (1998): 459–70.

Haffajee, Rebecca. 'Prosecuting Crimes of Rape and Sexual Violence at the ICTR: the Application of Joint Criminal Enterprise'. *Harvard Journal of Law and Gender* 29 (2006): 201–21.

Hagan, John, and Levi, Ron. 'Crimes of War and the Force of Law'. *Social Forces* 83:4 (2005): 1499–1534.

Hammer, Leonard. *A Foucauldian Approach to International Law: Descriptive Thoughts for Normative Issues*. Aldershot: Ashgate, 2013.

Hankel, Gerd. 'The United Nations, The Cold War, And Its Legacy'. In Bloxham and Pendas, *Oxford Handbook to Genocide Studies*, 579–96.

Harris, Verne. 'The Archival Sliver: Power, Memory and Archives in South Africa'. *Archival Science* 2:1 (2002): 63–86.

Hayner, Priscilla. *Unspeakable Truths: Confronting State Terror and Atrocity: How Truth Commissions around the World Are Challenging the Past and Shaping the Future*. London: Routledge, 2001.

Hazan, Pierre. *Judging War, Judging History: behind Truth and Reconciliation*. Stanford: Stanford University Press: 2nd Edition, 2010.

Hedstrom, Margaret. 'Archives, Memory, and Interfaces with the Past'. *Archival Science* 2:2 (2002): 21–43.

Heins, Volker. 'Giorgio Agamben and the Current State of Affairs in Humanitarian Law and Human Rights Policy'. *German Law Journal* 6:5 (2005): 845–60.

Henry, Nicola. 'The Impossibility of Bearing Witness: Wartime Rape and the Promise of Justice'. *Violence against Women* 16:10 (2010): 1098–119.

—. 'Witness to Rape: The Limits and Potential of International War Crimes Trials for Victims of Wartime Sexual Violence'. *The International Journal of Transitional Justice* 3:1 (2009): 114–34.

Hilsum, Lindsey. 'Reporting Rwanda: the Media and the Aid Agencies'. In Thompson, *Media and the Rwandan Genocide*, 167–88.

Hintjens, Helen. 'Explaining the 1994 Genocide in Rwanda'. *Journal of Modern African Studies* 37:2 (1999): 241–86.

Hinton, Alexander. 'Introduction: toward an Anthropology of Transitional Justice'. In Hinton, *Transitional Justice*, 1–22.

—, ed. *Transitional Justice: Global Mechanisms and Local Realities after Genocide and Mass Violence*. Piscataway: Rutgers University Press, 2012.

—, and Kevin O'Neil. 'Genocide: Truth, Memory, and Representation: An Introduction'. In Hinton and O'Neil, *Genocide*, 1–29.

—, eds. *Genocide: Truth, Memory and Representation*. Durham: Duke University Press, 2009.

Hockett, Jeffrey. 'Justice Robert H. Jackson, the Supreme Court and the Nuremberg Trial'. *Supreme Court Review* (1990): 257–99.

Hol, Antoine. 'The Theatre of Justice: On the Educational Meaning of Criminal Trials'. In Bell *et al.*, *Transitional Justice: Images and Memories*, 121–7.

Hoyle, Carolyn, and Leila Ullrich. 'New Court, New Justice? The Evolution of "Justice for Victims" at Domestic Courts and at the International Criminal Court'. *Journal of International Criminal Justice* 12:4 (2014): 681–703.

Human Rights Brief. 'Moving Forward: A Reflection on Current Issues Facing International Criminal Justice with Richard Goldstone'. *Human Rights Brief* 21:2 (2014): 32–5.

Humphrey, Michael. 'From Victim to Victimhood: Truth Commissions and Trials as Rituals of Political Transition and Individual Healing'. *The Australian Journal of Anthropology* 13:2 (2003): 171–87.

—. 'International Intervention, Justice and National Reconciliation: the Role of the ICTY and ICTR in Bosnia and Rwanda'. *Journal of Human Rights* 2:4 (2003): 495–505.

Hunt, Alan and Gary Wickham. *Foucault and Law: Towards a Sociology of Law as Governance*. London: Pluto Press, 1994.

Kagwi–Ndungu, Charity. ‘Challenges in Prosecuting Print Media for Incitement to Genocide’. In Thompson, *Media and the Rwandan Genocide*, 330–42.

Kansteiner, Wulf. ‘Losing the War, Winning the Memory Battle’. In Lebow, *Politics of Memory in Postwar Europe*, 103–46.

Kaplan, Elisabeth. ‘We Are What We Collect, We Collect What We Are: Archives and the Construction of Identity’. *The American Archivist* 63 (2000): 126–51.

Kaplan, Richard. *The Coming Anarchy: Shattering the Dreams of the Cold War*. New York: Random House, 2000.

Kaufman, Debra, Gerald Herman, Jamie Ross and David Phillips, eds. *From the Protocols of the Elders of Zion to Holocaust Denial Trial: Challenging the Media, Law and the Academy*. London: Valentine Mitchell, 2007.

Kaye, David. ‘Archiving Justice: Conceptualising the Archives of the United Nations International Criminal Tribunal for the Former Yugoslavia’. *Archival Science* 14:3–4 (2014): 381–96.

Keller, Linda. ‘Seeking Justice at the International Criminal Court: Victims’ Reparations’. *Thomas Jefferson Law Review* 29:2 (2007): 189–217.

Kelsall, Tim. *Culture under Cross–examination: International Justice and the Special Court for Sierra Leone*. Cambridge: Cambridge University Press, 2009.

—. ‘Politics, Anti–politics, International Justice: Language and Power in the Special Court for Sierra Leone’. *Review of International Studies* 32:4 (2006): 587–602.

Kempner, Robert. ‘The Nuremberg Trials as Sources of Recent German Political and Historical Materials’. *The American Political Science Review* 44:2 (1950): 447–59.

Kennedy, Duncan. *A Critique of Adjudication (fin de siècle)*. London: Harvard University Press, 1997.

—. ‘The Stakes of Law, or Hale and Foucault!’. *Legal Studies Forum* 15:4 (1991): 327–66.

Kerr, Rachel. *The International Criminal Tribunal for the Former Yugoslavia: An Exercise in Law, Politics, and Diplomacy*. Oxford: Oxford University Press, 2004.

—, and Erin Mobekk. *Peace and Justice: Seeking Accountability after War*. Cambridge: Polity, 2007.

Ketelaar, Eric. ‘Tacit Narratives: The Meanings of Archives’. *Archival Science* 2:1 (2002): 131–41.

Koskenniemi, Martii. 'The Politics of International Law – 20 Years Later'. *The European Journal of International Law* 20:1 (2009): 7–19.

Kritsiotis, Dino. 'When States Use Armed Force'. In Reus-Smit, *Politics of International Law*, 45–80.

Kruper, Leo. 'Genocide: It's Political Use in the Twentieth Century'. In *Genocide: An Anthropological Reader*, edited by Alexander Hinton. Oxford: Wiley, 2002, 48–73.

Kuperman, Alan. 'How the Media Missed the Rwanda Genocide'. In Thompson, *Media and the Rwandan Genocide*, 256–60.

—. *The Limits of Humanitarian Intervention: Genocide in Rwanda*. Washington: Brookings Institution Press, 2001.

Lambourne, Wendy. 'Transitional Justice and Peacebuilding after Mass Violence'. *International Journal of Transitional Justice* 3:1 (2009): 1–21.

LeBor, Adam. *"Complicity with Evil": The United Nations in the Age of Modern Genocide*. London: Yale University Press, 2006.

Lebow, Richard, Wulf Kansteiner and Claudio Fogu, eds. *The Politics of Memory in Postwar Europe*. London: Duke University Press, 2006.

Leff, Laurel. 'Jewish Victims in a Wartime Frame: a Press Portrait of the Nuremberg Trial'. In Kaufman *et al.*, *From the Protocols of the Elders of Zion to Holocaust Denial Trial*, 80–102.

Levene, Mark. 'Why Is the Twentieth Century the Century of Genocide?' *Journal of World History* 11:2 (2000): 305–36.

Levinson, Sanford. 'The Rhetoric of the Judicial Opinion'. In Brooks and Gewirtz, *Law's Stories*, 187–206.

Longman, Timothy, and Theoneste Rutagengwa, 'Memory, Identity and Community in Rwanda'. In Stover and Weinstein, *My Neighbour, My Enemy*, 162–82.

Lemarchand, René. 'The 1994 Rwanda Genocide'. In Bartrop and Totten, *Genocide Studies Reader*, 483–507.

Litowitz, Douglas. *Post Modern Philosophy and Law*. Lawrence: University Press of Kansas, 1997.

Luban, David. 'After the Honeymoon Reflections on the Current State of International Criminal Justice'. *Journal of International Criminal Justice* 11:3 (2013): 505–15.

MacKinnon, Catharine. 'Crimes of War, Crimes of Peace'. *UCLA Women's Law Journal* 4 (1993): 59–87.

—. 'Law's Stories as Reality and Politics'. In Brooks and Gewirtz, *Law's Stories*, 232–6.

—. 'The ICTR's Legacy on Sexual Violence'. *New England Journal of International and Comparative Law* 14:1 (2007): 211–21.

Madsen, Mikael, and Yves Dezalay. 'The Power of the Legal Field: Pierre Bourdieu and the Law'. In Banakar and Travers, *Introduction to Law and Social Theory*, 188–204.

Magnarella, Paul. *Justice in Africa: Rwanda's Genocide, Its Courts, and the UN Criminal Tribunal*. Aldershot: Ashgate, 2000.

Maier, Charles. "'Doing History, Doing Justice": The Narrative of the Historian and of the Truth Commission'. In Rotberg and Thompson, *Truth v. Justice*, 262–75.

Mamdani, Mahmood. *When Victims Become Killers: Colonialism, Nativism, and the Genocide in Rwanda*. Oxford: Princeton University Press, 2014.

Mani, Rama. *Beyond Retribution: Seeking Justice in the Shadows of War*. Cambridge: Wiley, 2007.

Manoff, Marlene. 'Theories of the Archive from Across the Discipline'. *Libraries and the Academy* 4:1 (2004): 9–25.

Marrus, Michael. 'The Holocaust at Nuremberg'. *Yad Vashem Studies* 26 (1998): 1–32.

Maxwell Atkinson, Ronald, and Paul Drew. *Order in Court: The Organization of Verbal Interaction in Juridical Settings*. Atlantic Highlands: Humanities Press, 1979.

McEvoy, Kieran. 'Beyond Legalism: Towards a Thicker Understanding of Transitional Justice'. *Journal of Law and Society* 34:4 (2007): 411–40.

— and Kirsten McConnachie. 'Victims and Transitional Justice: Voice, Agency and Blame'. *Social and Legal Studies* 22:4 (2013): 489–513.

Mégret, Frédéric. 'From "Savages" to "Unlawful Combatants": A Postcolonial Look at International Humanitarian Law's "Other"'. In Orford, *International Law and Its Others*, 265–318.

—. 'The Politics of International Criminal Justice'. *European Journal of International Law* 13:5 (2002): 1261–84.

Melvorn, Linda. 'Missing the Story: the Media and the Rwanda Genocide.' In Thompson, *Media and the Rwandan Genocide*, 198–211.

—. *A People Betrayed: The Role of the West in Rwanda's Genocide*. London: Zed Books: 2nd Edition, 2009.

— and Paul Williams, 'Britannia Waived the Rules: The Major Government and the 1994 Rwanda Genocide'. *African Affairs* 133:401 (2004): 1–22.

Mendeloff, David. 'Truth–Seeking, Truth–Telling, and Postconflict Peacebuilding: Curb the Enthusiasm?'. *International Studies Review* 6:3 (2004): 355–80.

Meron, Theodor. 'The Humanization of Humanitarian Law'. *American Journal of International Law* 94:2 (2000): 239–78.

Merry, Sally Engle. 'New Legal Realism and the Ethnography of Translational Law'. *Law and Social Inquiry* 31:4(2006): 975–995.

Michalski, Milena, and James Gow. *War, Image and Legitimacy: Viewing Contemporary Conflict*. London: Routledge, 2007.

Miller, Gearoid. 'Local Evaluations of Justice through Truth telling in Sierra Leone: Postwar Needs and Transitional Justice'. *Human Rights review* 12:4 (2001): 515–35.

Miller, Yiana. 'Creating Unity through History: the Eichmann Trial as Transition'. *Journal of Modern Jewish Studies* 1:2 (2002): 131–49.

Miller, Zinaida. 'Effects of Invisibility: in Search of the 'Economic' in Transitional Justice'. *The International Journal of Transitional Justice* 2:3 (2008): 266–91.

Minow, Martha. *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence*. Boston: Beacon Press, 1998.

—. 'The Hope for Healing: What Can Truth Commissions Do?' In Rotberg and Thompson, *Truth v. Justice*, 235–60.

—. 'Introduction: Robert Cover and Law, Judging, and Violence'. In Minow *et al.*, *Narrative, Violence, and the Law*, 1–13.

—. *Making All the Difference: Inclusion, Exclusion, and American Law*. London: Cornell University Press, 1990.

—. 'Making History or Making Peace: When Prosecutions Should Give Way to Truth Commissions and Peace Negotiations'. *Journal of Human Rights* 7:2 (2008): 174–85.

—. 'The Work of Re-membering: after Genocide and Mass Atrocity'. *Fordham International Law Journal* 23:2 (1999): 429–39.

—, Michael Ryan, and Austin Sarat, eds. *Narrative, Violence, and the Law: The Essays of Robert Cover*. Michigan: The University of Michigan, 1995.

Moghalu, Kingsley. *Rwanda's Genocide: The Politics of Global Justice*. Basingstoke: Palgrave Macmillan, 2005.

Moshman, David. 'Conceptions of Genocide and Perceptions of History'. In Stone, *Historiography of Genocide*, 71–92.

Mutua, Makau. 'Savages, Victims, and Saviours: the Metaphor of Human Rights'. *Harvard International Law Journal* 42:1 (2001): 201–45.

Nagy, Rosemary. 'Transitional Justice as Global Project: Critical Reflections'. *Third World Quarterly* 29:2 (2008): 275–89.

Neuffer, Elizabeth. *The Key to My Neighbour's House: Seeking Justice in Bosnia and Rwanda*. New York: Picador, 2001.

Ngoga, Martin. 'The Institutionalisation of Impunity: a Judicial Perspective of the Rwandan Genocide'. In Clark *et al.*, *After Genocide*, 321–33.

Nowrojee, Binaifer. 'A Lost Opportunity for Justice: Why Did the ICTR Not Prosecute Gender Propaganda'. In Thompson, *Media and the Rwandan Genocide*, 362–74.

—. 'Your Justice Is Too Slow: Will the International Criminal Tribunal for Rwanda Fail Rape Victims'. In Pankhurst, *Gendered Peace*, 107–36.

—. "'Your Justice Is Too Slow': Will the ICTR Fail Rwanda's Rape Victims?' *United Nations Research Institute for Social Development* (Nov, 2005): 1–28.

Orentlicher, Diane. 'Settling Accounts: the Duty to Prosecute Human Rights Violations of a Prior Regime'. *The Yale Law Journal* 100:8 (1991): 2537–615.

Orford, Ann, 'A Jurisprudence of the limit'. In Orford, *International Law and Its Others*, 1–35.

—, ed. *International Law and Its Others*. Cambridge: Cambridge University Press, 2006.

Osborne, Thomas. 'The Ordinarieness of the Archive'. *History of Human Sciences* 12:2 (1999): 51–64.

Osiel, Mark. *Mass Atrocity, Collective Memory, and the Law*. New Jersey: Transaction Publishers, 2000.

Otto, Dianne. 'Subalternity and International Law: the Problem of Global Community and the Incommensurability of Difference'. *Social and Legal Studies* 5:3 (1996): 337–64.

Pahuja, Sundhya. 'The Postcoloniality of International Law'. *Harvard International Law Journal* 46:2 (2005): 459–469.

Palmer, Nicola, and Phil Clark, eds. *Critical Perspectives in Transitional Justice*. Antwerp: Intersentia, 2012.

Pankhurst, Donna, ed. *Gendered Peace: Women's Struggle for Post-War Justice and Reconciliation*. Abingdon: Routledge, 2009.

Pena, Marianna, and Gaelle Carayon. 'Is the ICC Making the Most of Victim Participation?' *Journal of Transitional Justice* 7:3 (2013): 518–35.

Pendas, David. *The Frankfurt Auschwitz Trial, 1963–1965*. Cambridge: Cambridge University Press, 2006.

Peskin, Victor. 'Courting Rwanda: the Promises and Pitfalls of the ICTR Outreach Programme'. *Journal of International Criminal Justice* 3:4 (2005): 950–61.

—. *International Justice in Rwanda and the Balkans: Virtual Trials and the Struggle for State Cooperation*. Cambridge: Cambridge University Press, 2008.

Potter, Jonathan, and Margaret Wetherell. 'Discourse Analysis and the Identification of Interpretive Repertoires'. In *Analysing Everyday Interpretations*, edited by Charles Antaki, 168–183. London: sage, 1988.

—. *Discourse and Social Psychology: beyond Attitudes and Behaviour*. London: Sage, 1987.

—. 'Discourse: Noun, Verb or Social Practice?' *Philosophical Psychology* 3:2 (1990): 205–17.

Power, Samantha. *A Problem from Hell: America and the Age of Genocide*. London: Flamingo, 2003.

Priban, Jiri. 'Sharing the Paradigms? Critical Legal Studies and the Sociology of Law'. In Banakar and Travers, *Introduction to Law and Social Theory*, 119–33.

Prunier, Gérard. *The Rwanda Crisis: History of Genocide*. London: Hurst & Company, 1995.

Rainbow, Paul, ed. *The Foucault Reader*. London: Random House, 1984.

Renner, Judith. 'A Discourse Theoretic Approach to Transitional Justice Ideas: Conceptualising 'Reconciliation' as an Empty Universal in times of Political Transition.' In Palmer and Clark. *Critical Perspectives in Transitional Justice*. 51–71.

Rettig, Mark. 'Gacaca: Truth, Justice and Reconciliation in Postconflict Rwanda?' *African Studies Review* 51:3 (2008): 25–50.

—. 'The Sovu Trials: the Impact of Genocide Justice on One Community'. In Straus and Waldorf, *Remaking Rwanda*, 194–210.

Reus-Smit, Chris. 'The Politics of International Law'. In Reus-Smit, *Politics of International Law*, 14–44.

—, ed. *The Politics of International Law*. Cambridge: Cambridge University Press, 2004.

Reyntjens, Filip. 'Constructing the Truth, Dealing with Dissent, Domesticating the World: Governance in Post-genocide Rwanda'. *African Affairs* 110:438 (2011): 1–34.

—. 'Rwanda, Ten Years on: from Genocide to Dictatorship'. *African Affairs* 103:411 (2004): 177–210.

Ricoeur, Paul. *Memory, History, Forgetting*. London: The University of Chicago Press, 2004.

Robben, Antonius. 'Testimonies, Truths, and Transitions of Justice in Argentina and Chile'. In Hinton, *Transitional Justice*, 179–205.

Robertson, Geoffrey. *Crimes against Humanity: The Struggle for Global Justice*. London: Penguin Books: 3rd Edition, 2006.

Rodman, Kenneth. 'Justice as a Dialogue between Law and Politics'. *Journal of International Criminal Justice* 12:3 (2014): 437–469.

Roht-Arriaza, Naomi. 'Editorial Note'. *The International Journal of Transitional Justice* 7:3 (2013): 383–92.

Rosenblum, Nancy. 'Justice and the Experience of Injustice'. In *Breaking Cycles of Hatred: Memory, Law and Repair*, edited by Nancy Rosenblum and Martha Minow, 77–103. Oxford: Princeton University Press, 2002.

Rotberg, Robert. 'Truth Commissions and the Provision of Truth, Justice, and Reconciliation'. In Rotberg and Thompson, *Truth v. Justice*, 3–22.

—, and Dennis Thompson, eds. *Truth v. Justice: the Morality of Truth Commissions*. Princeton: Princeton University Press, 2000.

Rousso, Henry. *The Haunting Past: History, Memory and Justice in Contemporary France*. Pennsylvania: University of Pennsylvania Press, 2002.

Rowland, Antony, and Jane Jun, eds. *The Future of Testimony: Interdisciplinary Perspectives on Witnessing*. Florence: Routledge, 2014

Ruzindana, Mathias. 'The Challenges of Understanding Kinyarwanda: Key Terms Used to Investigate the 1994 Genocide in Rwanda'. In *Propaganda, War Crimes Trials and International Law: from Speakers Corner to War Crimes*, edited by Predrag Dojcinovic. Abingdon: Routledge, 2012, 145–70.

Ryan, Allan. 'Jewish Identity, the International Tribunal at Nuremberg and the Eichmann Trial'. In Kaufman *et al.*, *From the Protocols of the Elders of Zion to Holocaust Denial Trial*, 102–10.

Sadat, Leila. 'The Legal Legacy of Maurice Papon'. In Golsan, *Papon Affair*, 131–62.

Sandland, Ralph. 'Between "Truth" And "Difference": Post Structuralism, Law and the Power of Feminism'. *Feminist Legal Studies* 3:1 (1995): 4–47.

Sarat, Austin, and Thomas Kearns. 'A Journey through Forgetting: toward a Jurisprudence of Violence'. In Sarat and Kearns, *Fate of Law*, 209–74.

—. 'Writing History and Registering Memory in Legal Decisions and Legal Practices: an Introduction'. In *History, Memory, and the Law*, edited by Austin Sarat and Thomas Kearns, 1–24. Michigan: University of Michigan, 1999.

—, eds. *The Fate of Law*. Michigan: The University of Michigan, 1993.

Schabas, William. 'The Law and Genocide'. In Bloxham and Pendas, *Oxford Handbook to Genocide Studies*, 123–41.

—. 'Post-Genocide Justice in Rwanda: a Spectrum of Options'. Clark *et al.*, *After Genocide*, 207–29.

—. 'Prosecuting Genocide'. In Stone, *Historiography of Genocide*, 253–70.

—. *The UN International Criminal Tribunals: the Former Yugoslavia, Rwanda and Sierra Leone*. Cambridge: Cambridge University Press, 2006.

Schwartz, Joan and Terry Cook. 'Archives, Records, and Power: The Making of Modern Memory'. *Archival Science* 2:1 (2002): 1–19.

Segev, Tom. *The Seventh Million. The Israelis and the Holocaust*. New York: Hill and Wang, 1993.

Shaw, Rosalind. 'Memory Frictions: Localising the Truth and Reconciliation Commission in Sierra Leone'. *The International Journal of Transitional Justice* 1:2 (2007): 183–207.

Siegel, Reva. 'In the Eyes of the Law: Reflections on the Authority of Legal Discourse'. In Brooks and Gewirtz, *Law's Stories*, 225–32.

Simpson, Gerry. *Law, War and Crime: War Crimes Trials and the Reinvention of International Law*. Cambridge: Polity Press, 2007.

Steinitz, Maya. 'The International Criminal Tribunal for Rwanda as Theatre: the Social Negotiation of the Moral Authority of International Law'. *Journal of International Law and Policy* 5 (2007): 1–31.

Stoler, Ann. 'Colonial Archives and the Arts of Governance'. *Archival Science* 2:1 (2002): 87–109.

Stone, Dan. 'Genocide and Memory'. In Bloxham and Pendas, *Oxford Handbook to Genocide Studies*, 123–41.

Stone, Dan. 'History, Memory, Testimony'. In Rowland and Jun, *Future of Testimony*, 16–27.

—, ed. *The Historiography of Genocide*. New York: Palgrave MacMillan, 2008.

Stover, Eric, *The Witnesses*. Philadelphia: University of Pennsylvania Press, 2005.

—. 'Witnesses and the Promise of Justice', in Weinstein and Stover, *My Neighbour, My Enemy*, 104–20.

— and Harvey Weinstein. 'Introduction: Conflict, Justice and Reclamation', in Weinstein and Stover, *My Neighbour, My Enemy*, 1–28.

—, eds. *My Neighbour, My Enemy: Justice and Community in the Aftermath of Mass Atrocity*. Cambridge: Cambridge University Press, 2004.

Straus, Scott. 'The Historiography of the Rwandan Genocide'. In Stone, *Historiography*, 517–42.

—. *The Order of Genocide: Race, Power and War in Rwanda*. London, Cornell University Press, 2006.

—, and Lars Waldorf, eds. *Remaking Rwanda: State Building and Human Rights after Mass Violence*. London: The University of Wisconsin Press, 2011.

Sweet, Alec, and Wayne Sandholtz. 'Law, Politics, and International Governance'. In Reus-Smit, *Politics of International Law*, 238–72.

Tadros, Victor. 'Between Governance and Discipline: the Law and Michel Foucault'. *Oxford Journal of Legal Studies* 18 (1998): 75–103.

Taylor, Stephanie. 'Locating and Conducting Discourse Analytic Research'. In *Discourse as Data: a Guide for Analysis*, edited by Margaret Wetherell, Stephanie Taylor and Simon Yates, 5–49. London: Sage, 2001.

Taylor, Telford. 'The Nuremberg War Crimes Trials'. *International Conciliation* 27 (1949): 243–375.

Teitel, Ruti. *Transitional Justice*. Oxford: Oxford University Press, 2000.

—. 'Transitional Justice Genealogy'. *Harvard Human Rights Journal* 16:69 (2003): 65–94.

—. 'The Universal and the Particular in International Criminal Justice'. *Columbia Human Rights Law Review* 30:285 (1998): 285–303.

Tepperman, Jonathan. 'Truth and Consequences'. *Foreign Affairs*, 81:2 (2002): 128–45.

Thompson, Alan, ed. *The Media and the Rwandan Genocide*. London: Pluto Press, 2007.

Trotter, Andrew. 'Witness Intimidation in International Trials: Balancing the Need for Protection against the Rights of the Accused'. *The George Washington International Law Review* 44 (2012): 521–36.

Turkel, Gerald. 'Michel Foucault: Law, Power, and Knowledge'. *Journal of Law and Society* 17:2 (1990): 170–93.

Turner, Jenia. 'Defense Perspectives on Law and Politics in International Criminal Trials'. *Virginia Journal of International Law* 48:3 (2007): 529–93.

Uvin, Peter, and Charles Mironko. 'Western and Local Approaches to Justice in Rwanda'. *Global Governance* 9 (2003): 219–31.

Velody, Irving. 'The Archive and the Human Sciences: Notes towards a Theory of the Archive'. *History of the Human Sciences* 11:4 (1998): 1–16.

Venema, Dirk. 'Transitions as States of Exception: towards a More General Theory of Transitional Justice'. In Palmer *et al.*, *Critical Perspectives in Transitional Justice*, 73–89.

von Kellenbach, Katherine. 'Vanishing Acts: Perpetrators in Post-war Germany'. *Holocaust and Genocide Studies* 17 (2003): 305–29.

Wallace, William. 'British Foreign Policy after the Cold War', *International Affairs* 68:3 (1992): 423–42.

Walsh, Martha. 'Gendering International Justice: Progress and Pitfalls at International Criminal Tribunals'. In Pankhurst, *Gendered Peace*, 31–65.

Wang, Sarah. 'Transitional Justice as Retribution: Revisiting Its Kantian Roots'. In Palmer *et al.*, *Critical Perspectives in Transitional Justice*. 31–51.

Wardorf, Lars. 'Revisiting Hotel Rwanda: Genocide Ideology, Reconciliation and Rescuers'. *Journal of Genocide Research* 11:1 (2009): 101–25.

Webster, Don. 'The Uneasy Relationship between the ICTR and Gacaca'. In Straus and Waldorf, *Remaking Rwanda*, 184–94.

Weisberg, Robert. 'Proclaiming Trials as Narratives: Premises and Pretenses'. In Brooks and Gewirtz, *Law's Stories*, 61–84.

Weitz, Eric. 'The Modernity of Genocides: War, Race and Revolution in the Twentieth Century'. In *The Specter of Genocide: Mass Murder in Historical Perspective*, edited by Robert Gellately and Ben Kiernan, 53–74. Cambridge: Cambridge University Press, 2003.

West, Robin. 'Disciplines, Subjectivity, and Law'. Sarat and Kearns, *Fate of Law*, 119–57.

White, Hayden. *The Content of the Form: Narrative Discourse and Historical Representation*. Baltimore: John Hopkins University Press, 1987.

White, James. *Justice as Translation: an Essay in Cultural and Legal Criticism*. Chicago: Chicago University Press, 1990.

Wickham, Gary. 'Foucault and Law'. In Banakar and Travers, *Introduction to Law and Social Theory*, 248–65.

Wickham, Gary. 'Foucault, Law and Power: a Reassessment'. *Journal of Law and Society* 33:4 (2006): 596–614.

Wieviorka, Annette. *The Era of the Witness*. Cornell University Press: New York: 2006.

Wilson, Richard. 'Judging History: the Historical Record of the International Criminal Tribunal for the Former Yugoslavia'. *Human Rights Quarterly* 27:3 (2005): 908–42.

—. *Writing History in International Criminal Trials*. Cambridge: Cambridge University Press, 2010.

Wittmann, Rebecca. 'Indicting Auschwitz? the Paradox of the Frankfurt Auschwitz Trial'. *German History* 21:4 (2003): 505–32.

—. 'Telling the Story: Survivor Testimony and the Narration of the Frankfurt Auschwitz Trial'. *Bulletin of the German Historical Institute* 31 (2003): 93–101.

—. 'The Wheels of Justice Turn Slowly: the Pre-trial Investigations of the Frankfurt Auschwitz Trial 1963–65'. *Central European History* 35:2 (2002): 345–78.

Wood, Nancy. 'Crimes or Misdemeanours?: Memory on Trial in Contemporary France'. *French Cultural Studies* 5 (1994) : 1–21.

—. 'The Papon Trial in an "Era of Testimony"'. In Golsan, *Papon Affair*, 96–115.

Wooffitt, Robin. *Conversation Analysis and Discourse Analysis: a Comparative and Critical Introduction*. London: Sage, 2005.

Yacoubian, George. 'The Efficacy of International Criminal Justice: Evaluating the Aftermath of the Rwandan Genocide'. *World Affairs* 161:4 (1999): 186–92.

Zorbas, Eugenia. 'Reconciliation in Post-genocide Rwanda'. *African Journal of Legal Studies* 1:1 (2004): 29–52.